4879

SUPREME COURT OF THE UNITED STATES.

No. 158.

JOHN M. CASTNER, JOHN S. HINKLEY, HENRY L. MOSS AND LAFAYETTE EMMETT, APP'TS.

vs.

CHARLES SYMONDS.

APPEAL FROM THE SUPREME COURT OF MINNESOTA.

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In Chancery.

To the Judge of the District Court for the first district and county of Ramsey, complaining, showeth unto your Honor your orator, Charles Symonds, of the county of Ramsey.

That on the 8th day of May, A. D. 1852, a judgment was rendered in the district court for the county aforesaid, in a suit therein pending, wherein John M. Castner and John S. Hinkley are plaintiffs, and Daniel F. Brawley and your orator are defendants, for the sum of one hundred twenty-one dollars and seventy-four cents, upon an indebtedness that accrued previous to the first day of August, in the year 1851.

That after the day and year first aforesaid, a writ of execution issued out of said court in said cause, directed to the sheriff of said county, and was to him delivered, commanding him, among other things, to satisfy such judgment out of the personal property of said defendants, and if sufficient personal property could not be found, then out of the real property of said defendants.

That on the 2d day of October, in the year 1852, George F. Brott, esquire, sheriff of said county, sold, or pretended to sell, as such sheriff, the following described real estate, as the property of your orator, of which your orator was sole owner—that is to say: Lots numbered fourteen and fifteen, in block numbered thirty-three, in Rice and Irvine's addition to the town of St. Paul, and also lot number two of section number twelve, in township numbered twenty-eight north, of range number twenty-three west, as the property of your orator, and of which your orator was part owner.

That the aggregate amount for which said property was sold is the sum of one hundred and fifty dollars, and that the said plaintiffs were the purchasers thereof at said sale.

That, owing to sudden illness, your orator was unable to attend said sale.

That, from a printed notice of such sale, and the sheriffs return to said execution, it is pretended that a levy was made upon said lands on the 17th day of August, 1852, and also upon another parcel of land, as the property of your orator, to wit, the northwest quarter of the northeast quarter of section numbered twelve, in township numbered twenty-eight north, of range number twenty-three west, of which your orator is also part owner.

That on the day and year last aforesaid, your orator was absent from St. Paul, in said county, where he resides, and where said premises are situated, having left on a visit to Boston, Massachu-

setts, but that Austin Wooley and Issabella Wooley were, on, before, and after the 17th day of August, in the year 1852, occupying the premises described as lots No. fourteen and fifteen, in block number thirty-three, in Rice & Irvine's addition to St. Paul, and keeping house for your orator in a dwelling situate thereon, and that no copy of said execution was left with said occupants, or either of them, or posted in a conspicuous place upon said lots last aforesaid, nor upon any of the lands hereinbefore described, nor did said sheriff enter upon any of said lands to make said levy, and that only three notices of such sale were posted in said county, as your orator has been informed by said sheriff and others, and verily believes to be true.

That the said Austin Wooley was the agent of your orator, and authorized to pay such just demands and debts owing by your orator as might be presented for payment, and had moneys in his hands belonging to your orator for that purpose; and your orator is informed and believes, that said Austin Wooley had moneys belonging to your orator sufficient, or nearly sufficient, to satisfy said execution, on the 17th day of August, 1852; and your orator verily believes he would have paid the same, had it been presented to him—the said Wooley having paid other demands presented to him against your orator.

That your orator was possessed of at least one thousand dollars' worth of personal property not exempt from sale on execution, on the 17th day of August, 1852, and for a long time previous, among which were one hundred cords of wood, worth, at least, $200, situate on the premises occupied by said Austin Wooley and Issabella Wooley, and about 300 tons of ice, in an ice-house situate in St. Paul, near the premises aforesaid, worth, at least, $500, and a large amount of other personal property, such as brick-making machines, sleighs, &c., easily accessible to said sheriff, and in no wise concealed.

Your orator returned to St. Paul on the 5th day of September, 1852, and that it was not until about ten days before said pretended sale that he was aware that an execution had been issued in said cause.

That he was unable to pay the amount due thereon before 2d day of October, 1852; nor indeed until the first or second day of December, 1852.

That but a few days before the 2d day of December, 1852, your orator asked the said George F. Brott when the time to redeem said land would expire, and the said Brott replied, that the sixty days in which to redeem would, he thought, expire on the second day of December aforesaid; and your orator verily believed that time to redeem said premises did not expire until that day.

That on the day last aforesaid, tendered and paid to said sheriff, for the redemption of said property, the sum of one hundred

forty-six dollars and sixty-eight cents, being the amount estimated by him to be due to said plaintiffs for principal, interest and costs—the amount paid by said plaintiffs, if any, on said sale, being then in the hands of said sheriff.

Your orator further shows, that he was wholly ignorant when he paid said sum to said sheriff; that no copy of said execution had been left with the occupants of lots No. 14 and 15, in block No. 33 aforesaid, or posted in a conspicuous place upon any of the parcels of land aforesaid.

Your orator further shows, that said sheriff returned upon the back of said execution that he sold lots numbered fourteen and fifteen, in block number thirty-three, and lot No. two, of section No. 12, in township No. 28 north, of range 23 west, for the following sums respectively, to wit:

Lot No. 14 for.....$30 00
Lot No. 15 " 65 00
Lot No. 2 " 55 00

Making in the aggregate the sum of one hundred and fifty dollars; and filed said return annexed to said execution in the office of the clerk of said court; that said return did not specify a sale of the northwest quarter of the northeast quarter of section No. 12, in township number 28 north, of range No. 23 west, when so filed, nor for seven days thereafter.

And your orator is informed and believes, that the same was not sold by said sheriff on the 2d day of October, 1852, nor at any other time; that since the filing of said return with the clerk of said court, such return has been fraudulently altered, without the leave of the court, and as your orator believes by the instigation of said plaintiffs, Castner & Hinkley, so as to appear thereby that the land last aforesaid was sold to them upon said execution on the 2d day of December, 1852, together with lot No. 2, of section 12, in township No. 28 north, of range 23 west, at the sum of fifty-five dollars; that the lands before described are worth the sum of twenty-five hundred dollars, exclusive of all incumbrances thereon, and the interest of the part owners of a portion of *a* said land.

Your orator further shows, that the said sheriff has executed and delivered to the said John M. Castner and John S. Hinkley a deed of all the lands hereinbefore described, and that they have fraudulently received the same, and on the 8th day of December, 1852, carried it to be recorded to the office of the register of deeds in and for said county of Ramsey, in book D of deeds, on pages 559 and 560, and are endeavoring to dispose of and convey said lands in fraud of your orator's rights.

And your orator further shows unto your honor, that on the 26th day of January, instant, he tendered to said defendant the sum of one hundred fifty-three dollars and thirty five cents, being the

amount bid by them on said sale, with interest from the 2d day of October, 1852, for the redemption of said lands, and that they refused to receive the same; and your orator, therefore, brings that sum herewith into this court.

Your orator well hoped that the said John M. Castner and the said John S. Hinkley would have released all their claim or pretended claim to said lands, and would have relieved your orator's title thereto from the cloud or incumbrance occasioned by the recording of the deed so executed and delivered to them as aforesaid; your orator having applied to them to release said claim and relieve such title.

But now, so it is, may it please your honor, the said John M. Castner and John S. Hinkley, combining and confederating with other persons, whose names, when discovered, your orator prays may be inserted herein as defendants, the said confederates respectively do now absolutely refuse to release said claim, and relieve the title of your orator, to the aforesaid premises, from the incumbrance of said sheriff's deed.

All which actings and doings of the said confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator.

To the end, therefore, that the said John M. Castner and John S. Hinkley, and their confederates respectively, full, true, direct and perfect answers make, upon their respective corporal oaths, according to the best of their respective knowledge, information and belief, to all and singular the matters aforesaid, and that as fully and particularly, in every respect, as if the same were here again repeated, and they thereunto particularly interrogated—

And that the said John M. Castner and John S. Hinkley, their agents and attorneys, may be enjoined and restrained from selling, disposing of, conveying, encumbering or interfereing with the lands hereinbefore described; and that they may be decreed to reconvey the same to your orator, he hereby offering to pay any sum that may be due to them upon said judgment and execution, as this court may direct. And in case of their refusal to disincumber the title to said lands of the deed so made to them as aforesaid, that the decree of this court may stand in place of such disincumbrance; that the sale of said sheriff may be set aside and vacated, and that your orator may have such other or such further relief as may be agreeable to equity and the nature of his case—

May it please your honor to grant unto your orator the writ of injunction, issuing of and under the seal of this court, directed to the said John M. Castner and John S. Hinkley, their agents and attorneys, restraining and enjoining them as aforesaid.

May it please your honor to grant unto your orator the writ of subpœna, issuing out of and under the seal of this court, to be directed to the said John M. Castner and John S. Hinkley, com-

manding them, and each of them, by a certain day and under a certain penalty, therein to be inserted, to be and appear before your honor in the court of chancery, and then and there to answer the premises; and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orator shall ever pray, &c.

RICE, HOLLINSHEAD & BECKER,
Sol's, and of Counsel for Compl't.

TERRITORY OF MINNESOTA,
Ramsey County, ss.

On this 25th day of January, in the year 1853, personally came before me Charles Symonds, and being duly sworn, says that he has heard the foregoing bill of complaint read, and knows the contents thereof, and that the same is true of his own knowledge, except the matters therein stated to be upon his information or belief, and as to those matters he believes it to be true.

C. SYMONDS.

Sworn to and subscribed before me, this 26th day of January, 1853.

JAMES K. HUMPHREY,
Cl'k Dist. Court.

AT CHAMBERS, *St. Paul, 26th January,* 1853.

Upon filing a bond, by me approve, in the penalty of $1,000, and the foregoing bill of complaint, let an injunction issue, according to the prayer of the bill.

H. Z. HAYNER.

Filed January 26, 1853.

SHERWOOD HOUGH,
Dept. Cl'k.

In Chancery.

Minnesota Territory, District Court, 1st Judicial District, Ramsey county.

CHARLES SYMONDS
against
JOHN M. CASTNER and JOHN S. HINKLEY.

Please take notice, that upon the defendants' answer to the bill of complaint in this cause, and upon the affidavits of John M. Castner and M. E. Ames, copies of which are hereunto served upon you, and for reasons therein contained, a motion will be made and argued in behalf of the defendants, before the Hon. William H. Welch, judge of the first judicial district, at the next term of the district court, to be held in and for the county of Ramsey, at the court-house in St. Paul, in said county, on Monday, the

twenty-fourth (24th) day of October, A. D. 1853, at ten (10) o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, to vacate and set aside the order (pro confesso) that the bill of complaint to be taken as confessed by the defendants, heretofore made and entered in this cause on the part of the complainant, and that the defendants have leave to file their answer to the said bill of complaint in this cause, or that such further or other order may be made in the premises as shall be just.

Yours, respectfully,

AMES & VAN ETTEN,
Def'ts' Solicitors.

To Messrs. RICE, HOLLINSHEAD, and BECKER,
Compl'ts' Solicitors.

Dated St. Paul, Oct. 15, 1853.

TERRITORY OF MINNESOTA,
Ramsey County, ss.

J. V. D. Heard, being duly sworn, deposes and says, that on the 15th day of October instant he personally served upon E. Rice, of the firm of Rice, Hollinshead & Becker, a true copy of the within notice of motion; and true copies of the accompanying papers are hereto annexed at their office in St. Paul, county aforesaid.

J. V. D. HEARD.

Subscribed and sworn to before me this 18th day of Oct. 1853.
A. J. WHITNEY, *Clerk.*

In Chancery.

District Court, 1st Judicial District, Ramsey county.

CHARLES SYMONDS
against
JOHN M. CASTNER and JOHN S. HINKLEY.

RAMSEY COUNTY, *ss.*

John M. Castner came personally before me, and being duly sworn, says that he is one of the defendants in the above entitled cause; that sometime the last of January or first of February, A. D. 1853, and immediately after the writs of injunction and subpœna in this cause were served upon the defendants, this deponent called upon, retained, and employed H. F. Masterson, esq., of St. Paul, to act as solicitor and counsel for and on behalf of the defendant to defend this suit, and placed in his hands the copies of papers in the cause which had been served upon the defendants; that the said H. F. Masterson, esq., then engaged and promised this deponent that he would act as solicitor and counsel for the defendants, and take the necessary steps and proceedings for the defence of the

cause, and did assume to take charge of the same; and that the defendants both relied and depended solely upon his taking all steps and proceedings necessary to be taken in the proper and timely defence of the cause, and believed he would do so.

And deponent further says, that some time in the latter part of September last the said H. F. Masterzon declined to take further charge of their suit, and then informed this deponent, and he then understood from him that the time for making and filing the defendants' answer in this cause expired on the fifth day of October then next following; and deponent then understood and supposed that if said answer was made and filed on or before the fifth day of October, (the present month,) it would be in season and within the proper time, as limited and prescribed by the order and practice of this court; and the said answer of defendants was placed on file in this cause on the said fifth day of October, and this deponent did not until then know that any objection existed to the filing of said answer, or that it was not filed within the time limited by the order and practice of this court.

And deponent further says, that on the thirteenth day of October, (the present month,) he was informed for the first time, and first knew, that an order had been made and entered, that the complainants' bill of complaint be taken as confessed by the defendants; and on the day last mentioned, deponent (finding said Masterson would not attend further to said suit) at once employed Messrs. Ames & Van Etten to act as solicitors for the defendants.

And deponent further says, that the other deponent, John S. Hinkley, is now absent from this county, and has been continually absent from this county for several months last passed; and that the employing of a solicitor, as well as all other acts necessary to be done by the defendants for the defence of this cause, devolves and rests entirely and solely upon this deponent.

And deponent further says, that if the said order, heretofore made and entered on the part of the complainant, that the bill of complaint be taken as confessed by the defendants, should not be set aside or vacated, great injustice would be done to the defendants, and they would sustain great loss and hardship thereby; that the answer of the defendants continuing their defence to the bill of complaint is herewith produced, and offered to be filed in the cause.

JOHN M. CASTNER.

Sworn and subscribed before me this 15th day of October, A. D. 1853.

TRUMAN M. SMITH,
Justice of the Peace.

In Chancery.

District Court, 1st Judicial District, Ramsey county.

CHARLES SYMONDS
against
JOHN M. CASTNER & JOHN S. HINKLEY.

RAMSEY COUNTY, *ss.*

M. E. Ames came personally before me, and being duly sworn, says that he is one of the defendants' solicitors in the above entitled cause, and that he has read and examined the answer of the defendants to the bill of complaint and hereto annexed, and believes that the answer contains a good and full defence to the suit.

M. E. AMES.

Sworn to and subscribed before me the 15th day of October, 1853.

ORLANDO SIMONS,
Justice of the Peace.

DISTRICT COURT, 1ST JUDICIAL DISTRICT.
Ramsey County, ss.

The joint and several answers of John M. Castner and John S. Hinkley, the defendants to the bill of complaint of Charles Symonds, complainant.

The defendants now, and at all times hereafter, respectively saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say, that they admit that, on the 8th day of May, A. D. 1852, a judgment was rendered in their favor against said complainant and David F. Brawley, as stated in said bill, and for the sum therein stated, upon which said judgment a writ of execution was issued in manner, form, and substance, as in said bill alleged; and that on the 2d day of October, A. D. 1852, said George F. Brott, esq., sheriff of said county, under and by virtue of said writ of execution, sold, as sheriff aforesaid, the property first described in said bill as the property of the complainant, and that these defendants were the purchasers thereof; but they deny that said property was sold for the aggregate sum of one hundred and fifty dollars; on the contrary, they aver that lot No. 14 aforesaid was bid off by and sold to these defendants for the sum of thirty dollars; that lot No. 15 aforesaid was sold to these deponents for the sum of sixty-five dollars, and that said lot No. 2, together with the northwest quarter of the northeast quarter of section No. 12, township No. 28 north, of range No. 23 west, of the

4th principal meridian, both lying together unenclosed, and constituting but one body or parcel of land, was bid off by these defendants for the sum of fifty-five dollars, and that the aggregate sum of one hundred and fifty dollars, bid as aforesaid, embraced as well the price bid for the lot last above described as those first described in the bill of complaint aforesaid.

And these defendants further answering deny, that owing to sudden illness, or from any other cause, the complainant was unable to attend said sale.

And further answering defendants say, that as they are informed and believe, a levy was made upon the lands described in said bill, on the 17th day of August, 1852, and admit that the complainant, at the time of said levy, was absent; but they say they have no knowledge, information, or belief as to whether any person was there occupying in any manner any portion of the premises levied upon, or as to whether a copy of said execution was left with any such person, or posted in conspicuous place thereon, or whether only three or more notices of such sale were posted in said county, or whether any person in occupation of any portion of said premises had moneys belonging to said complainant, which they were authorized to apply on demands against him, or by which said execution might, could, or would have been satisfied. And these defendants further say, that, as they verily believe, said sheriff did enter upon said lands to make said levy, and that if complainant was at that time possessed of any personal property subject to sale on execution, the same was either concealed or in some other way rendered inaccessible or unavailable to said sheriff.

And further answering defendants say, that as they are informed and believe, complainant returned to St. Paul on the 5th day of September, 1852, and that on or about the 7th of said month of September complainant was informed by said sheriff that the property described in said bill had been levied upon by him under said execution; that it was advertised for sale in the Minnesota Democrat, a newspaper printed and of general circulation in said county, and unless said execution was otherwise sooner satisfied would be sold on the 2d day of October then next ensuing.

That said complainant said there was time enough, and that he would attend to the matter; that on the day of said sale said sheriff again notified complainant that said property would be sold on that day, and was returned for answer to "go ahead."

Defendants further answering deny that complainant was unable to pay off said execution before said sale, or to redeem said property after being sold as aforesaid; and they aver that he refused to pay off said execution, or to redeem said property, until too late to do so, from a desire to keep the money out of the hands of these defendants as long as possible. And they further deny

that said Brott at any time told complainant that the sixty days in which to redeem said lands would expire on the 2d day of December, but referred him to the records and papers relating thereto in the office of the clerk of said court.

Defendants admit, that on the 2d day of December the complainant tendered and delivered to said sheriff, for the redemption of said property, the sum of one hundred and forty-six dollars and sixty-eight cents; but deny that any sum whatever was tendered or paid until after the time for the redemption of said lands had fully elapsed, and aver that the full amount for which said property sold was never paid or tendered to said sheriff or the purchasers of said property.

And these defendants further admit that said sheriff returned said execution, as set forth in said bill, and that said return did not at first specify a sale of the northwest quarter of the northeast quarter of the section aforesaid, as of right it should have done; but these defendants aver that said last mentioned and described parcel of property was duly levied upon, advertised, and sold by said sheriff to these defendants, at the same time, for the same purpose and in the same manner as the rest of the property in said bill described, and that it was sold to these defendants, together with the property described as lot No. 2, in the same section, township and range, for the said sum of fifty-five dollars, and was included in and constituted a part of the consideration of their bid of fifty-five dollars, which went to make up the aggregate sum of one hundred and fifty dollars before mentioned; that said sheriff, in making and filing said return, inadvertently and by mistake omitted to include in the description of the land sold by virtue of said execution for said bid of fifty-five dollars, the said northwest quarter of the northeast quarter of the section aforesaid.

That afterwards, upon discovering his said omission and mistake, said sheriff, on the 8th day of January, A. D. 1853, made an affidavit before the Hon. H. Z. Hayner, chief justice and judge of the district court aforesaid, setting forth the fact of said sale, and the omission to include in said return the land last described, and asking to amend said return according to the facts, and so as to include in the list of the property sold said last mentioned piece or parcel of land; that upon said affidavit being signed by said judge, the said sheriff, believing that he was thereby authorized so to do by said judge, immediately amended his said return according to the facts and the prayer of said affidavit; but these defendants say that said return was so amended in good faith, and without any intent to injure or defraud any person whatsoever, as these defendants are informed and verily believe.

And further answering the said bill of complaint, defendants say, that the alteration aforesaid of the return aforesaid was not made by the said sheriff at their instigation or with their know-

ledge; that they purchased at said sale all of the property levied upon by said sheriff, and mentioned in his annexed return, in good faith, and without any knowledge whatever of the slightest irregularity, neglect, or omission on the part of said sheriff, either in levying upon, advertising, or selling said property, or making his return upon said execution, and fully believing that said sheriff had done his whole duty in the premises, and according to law.

These defendants further answering say, that on the 6th day of December, 1852, and before the discovery of the omission aforesaid in the return aforesaid, the said sheriff executed and delivered to them, as purchasers aforesaid, a deed, as required by law, for all the lands levied upon and sold to them, as well for the said northwest quarter of the northeast quarter of section 12, in the township and range aforesaid, as for the other parcels in said bill described, and that they received said deed, and had it recorded in the office of the register of deeds for the county aforesaid; but they most unequivocally deny that they received it fraudulently, or have in any other manner acted in fraud of the rights of said complainant. Defendants further say, that said lands are not worth the sum of $2,500, exclusive of incumbrances and the interest of part owners, or anything like that sum.

Defendants further answering say, that on the 22d day of January, 1853, the complainant appeared before this hon. court, and moved to vacate the sale by said sheriff of the property aforesaid, and to vacate his return thereof, and all proceedings subsequent to said sale; whereupon such proceedings were had, that it was adjudged and decreed by said court that said sale by the sheriff, as aforesaid, was in all respects regular and valid; and thereupon said motion was overruled, and said sale confirmed; which said judgment of confirmation still stands upon the records of said court unanswered, and not appealed from.

And for a further answer to said bill defendants say, that on the 26th day of January, A. D. 1853, and before the commencement of this suit, they sold and conveyed by deed of fee simple, to Henry L. Moss and Lafayette Emmett, for a valuable consideration and in good faith, said lots numbered 14 and 15 in the bill described; and also sold and conveyed by deed of fee simple to said Lafayette Emmett, for a good and valuable consideration, the remainder of the real property in said bill mentioned; and that these defendants have now no right, title, or interest whatever in or to any of said property, except in so far as they may be liable to said Moss and Emmett upon their general covenants of warranty. And having fully answered, defendants pray to be hence dismissed with their reasonable costs.

JOHN M. CASTNER,
JOHN S. HINKLEY.

TERRITORY OF MINNESOTA,
Ramsey County, ss.

On this 5th day of October, 1853, personally came before me, John M. Castner, one of the defendants who signed the foregoing answer, and says that said answer is true of his own knowledge, except as to matters which are therein stated upon information or belief, and as to such matters, that he believes it to be true.

JOHN M. CASTNER.

Subscribed and sworn to before me, on this 5th day of October, A. D. 1853.

C. W. BABCOCK,
Notary Public, M. T.

Filed October 5th, 1853.

SHERWOOD HOUGH,
Dept. Clk.

District Court, 2d District, Ramsey County.

CHARLES SYMONDS
against
JOHN M. CASTNER & JOHN S. HINKLEY. } In Equity.

The Replication of Charles Symonds, Complainant, to the answer of John M. Castner and John S. Hinkley, Defendants.

This repliant, saving and reserving to himself now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiency of the said answer, for replication therewith says, that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he has already prayed.

RICE, HOLLINSHEAD & BECKER,
Sol'rs for Compl't.

Filed Sept. 2d, 1854.

GEO. W. PRESCOTT, *Clerk.*

In the District Court of the 2d (late 1st) District of the Territory of Minnesota, Ramsey County.

CHARLES SYMONDS
against
JOHN M. CASTNER & JOHN S. HINKLEY. } In Chancery.

It is hereby stipulated by the above named parties, and by Henry L. Moss and Lafayette Emmett, acting by the attorneys of each respectively, that the said Henry L. Moss and Lafayette Emmett are hereby joined in this action with the above named defendants, as parties defendant therein, and that the case shall proceed with the same effect as if a supplemental bill or complaint had been filed and allowed, showing proper grounds for joining the said Henry L. Moss and Lafayette Emmett as defendants aforesaid. It is further stipulated that the said Henry L. Moss and Lafayette Emmett hereby appear to the complaint filed in this action as defendants aforesaid, and are allowed ten days from this date to answer the said complaint, and that the general replication to the answers of John M. Castner and John S. Hinkley, filed in this action, shall apply to such answers of the said Henry L. Moss and Lafayette Emmett, with the same effect as if the same had been put in after they had answered.

HENRY J. HORN, with
HOLLINSHEAD & BECKER,
Att'ys of Pl'ff.

JAMES SMITH, Jr.,
Sol'r for all the above named Defendants.

St. Paul, Nov. 28, 1856.

And now, Nov. 28, 1856, it is ordered that Henry L. Moss and Lafayette Emmett be joined as parties defendant in this action, and that they have ten days to answer the complaint filed in said action, according to the terms and conditions of the foregoing stipulation.

Filed Nov. 28, 1856.

GEO. W. PRESCOTT, *Clerk.*

District Court, Ramsey County, M. T.

CHARLES SYMONDS
vs.
JOHN M. CASTNER, JOHN S. HINKLEY, LAFAYETTE EMMETT, and HENRY L. MOSS. } In Chancery.

The joint and several answers of Henry L. Moss and Lafayette Emmett, two of the Defendants to the Bill of Complaint of Charles Symonds, plaintiff therein against John M. Castner, John S. Hinkley, and these Respondents, defendants in the court aforesaid.

These defendants, now and all times hereafter, saving and reserving to themselves and to each of them respectively all manner of benefit and exception to the many errors and insufficiences of said bill of complaint, and its manifest want of equity, for answer thereunto and to so much and such parts thereof as they are advised it is material for them to make answer unto—said respondents, Emmett and Moss, jointly answering, say that it is true that

said Castner and Hinkley recovered the judgment in said bill named, in said district court, against said complainant Symonds and said Daniel F. Brawley; that said judgment was duly docketed in said court on the 8th day of May, A. D. 1852; that at the time said judgment was so taken and docketed, said compl't Symonds had the legal title to and possessed said lots No. 14 and 15, in block No. 33, in Rice and Irvine's addition to St. Paul, and the one undivided half and moiety of said other real estate in said bill mentioned.

These respondents further say, that in addition to the amount stated, a large amount of costs had accrued thereon at the time of said sheriff's sale. That it is also true that a writ of execution issued in said case, in due form of law, directed to and received by said sheriff to execute. That it is not true that defendants had personal property sufficient to satisfy said execution in said county whereon to levy. That for the want of personal property, said sheriff proceeded to and did satisfy his execution and the lien of said judgment upon all the lots, tracts, and parcels in said bill described; and, in all respects as required by law, these respondents claim and insist said sheriff did seize and levy upon the same.

That after said seizure, and after due notice of the time and place of the sale of said real estate were duly given and published, the said sheriff personally notified said Symonds of said seizure and levy, and that if the amount due on said writ were not soon paid, all said real estate would be sold under said notice; and therefore said complainant Symonds instructed and directed said sheriff to go on with said sale, and did not then claim or pretend that due notice thereof had not been given. That no part of said judgment was paid prior to said sale; and said sheriff, according to said notice and direction, did proceed and sell said property in separate parcels, as required by law, to the highest and best bidders.

Def'ts say that the title, interest, and estate of said Symonds, in said several tracts and parcels of real estate, sold for its fair market value at the time; that many persons able to purchase and pay for the same were present at the time of said sale, yet no one would bid or give for either of said parcels a greater sum than that so bid by said Castner and Hinkley, as respondents are informed and believe. That said purchasers thereupon paid said sheriff in money the difference between the amount due upon the said execution at the said time of sale and the whole of the same so bid, and received the residue of said amount in satisfaction of said judgment, which thereby then and there became satisfied, and by reason of said sale and purchase discharged.

That Symonds did not, nor did any creditor of his, or any person for him, nor did any successor in interest at any time, within

sixty days from and after the said day of sale, tender or offer to pay to said sheriff or said Castner and Hinkley, or either of them, the amount of said bid or purchase-money, or any part thereof, but wholly failed and neglected to redeem said property, or any part thereof.

That it is true said Symonds, well knowing of the said sale, and that it had been made by said sheriff as aforesaid, did inquire of said sheriff when the time for the redemption of said property would expire; but it is not true that said sheriff informed complainant that it would expire on the 2d of December then next ensuing; on the contrary thereof, said sheriff referred said compl't to the records, and informed him that said property was sold, as he well knew, on the said 2d day of October, 1852, and requested him to calculate the time for redemption himself. That said compl't intended and designed to keep said Castner & Hinkley out of the fruits of their said judgment as long as the laws and circumstances of the case would permit—money then and there being worth, as respondents believe, to compl't, five per cent. per month to loan; and that he either did not have the money to redeem said premises from said sale within the time prescribed by law, or found the use of it so profitable that he neglected to or elected not to apply it. That after the time for redemption had expired, said compl't paid to said sheriff the sum of $\$146\frac{68}{100}$, a sum less than said bids; which said sheriff, by reason that the time for redemption had expired, refused to receive as such. That compl't, however, failed to repay the difference between said sum of $\$146\frac{68}{100}$ and $150, the amount paid on said purchase, and neglected to authorize or empower said sheriff to repay the same, or any part thereof, to said execution-plaintiffs; and shortly thereafter said sheriff paid out all the said moneys in his hands for said compl't's use, and under his direction, wholly withdrawing said pretended redemption-money and said sum so paid by said purchasers. That afterwards, to wit, on the day of December, A. D. 1852, said property remaining wholly unredeemed, said George F. Brott, as such sheriff, and still being and acting as such, made, signed, sealed, acknowledged and delivered to said John M. Castner and John S. Hinkley, as such purchasers, a deed in due form of law for the said several tracts, lots, and parcels, so as aforesaid sold, in fee simple. Said deed is referred to and made part of this answer. That by virtue thereof, the entire estate and interest of said Symonds and Brawley became and were vested in said Castner and Hinkley, and their heirs and assigns.

That after the execution and delivery of said deed, to wit, on the 22d day of Jan'y, A. D. 1853, said Charles Symonds filed in the court, then setting as a court of law, and on the side thereof, his petition or motion in writing of the date of December 20, 1852, therein admitting the rendition of said judgment and

the issuing of said execution, as in the bill in this case set forth; and further averring that said Brott, as such sheriff, claimed to have sold the said real estate, averring therein the said tender and redemption on said 2d day of Dec'r, as in said bill set forth, and therein claiming that said sale was irregular; that said sheriff did not in fact enter upon or seize and levy upon said land or lots, as in said of compl't set forth, and averring that no notice was by said sheriff posted upon any of said premises, or left with any occupant thereof; that he had personal property subject to said execution, as now claimed in said bill; and praying to be relieved in the premises, by having the said sale set aside, and all the said proceedings of said sheriff subsequent thereto. To which motion and proceeding the said Castner and Hinkley appeared, and by their answers took issue upon the said fact of levy, sale, and notice, as set up and pleaded by said compl't Symonds, and upon the several other allegations of s'd motion not admitted by said answers; and such proceedings were afterwards had, that, upon full hearing of the said case and of all said parties, said district court determined and adjudged the said issues in favor of said Castner and Hinkley, and against him, said Symonds, and then and there dismissed his said petition; as will more fully and at large appear, reference being had to the records and papers of said cause in said court remaining.

These respondents deny that any fraudulent alteration or amendment of said return to said writ was ever made by said sheriff, and that all the allegations of said bill of fraud, , or deceit charged upon said sheriff, or said Castner or Hinkley, or any other person, so far as these respondents believe or know, are false and wholly untrue.

Respondents further say, that after the decision of said motion, and after the due execution and delivery of said sheriff's deed, and before the allowance or issuing of any injunction in this case, and before the filing of the said bill of complaint, to which this is an answer, the said John M. Castner and John S. Hinkley, so being the lawful owners of all said real estate, for the consideration of one thousand dollars, sold, and by their deed signed, sealed, and duly acknowledged and delivered, conveyed in fee simple said lots No. fourteen (14) and fifteen, in block No. 33, in Rice and Irvine's addition to Saint Paul aforesaid, to these respondents. That these respondents are the bona fide owners and purchasers of said lots 14 and 15, for the valuable consideration aforesaid.

That said purchase was made by defendant, Henry L. Moss, who still owns and holds the undivided half thereof, and said Emmett the residue; that at the time of said purchase said Moss ascertained, from the sheriff's deed and writs and papers in said call, that said property had all been duly levied upon, and, upon due notice of the time and place of sale, duly and regularly sold, upon a valid

judgment against said Symonds and Brawley, and had not at the time of said purchase, or when the said deed of Castner and Hinkley was delivered in pursuance thereof, any knowledge or information impeaching said sale, for fraud or irregularity, and then and there supposed the same to be regular and valid, and that the provisions of the statute had in all respects been complied with. And respondents claim that the return of said sheriff, and the recitals in said deed of said sheriff, are conclusive of the facts therein stated, and cannot, in this proceeding, be attacked or impeached.

That there was a valid judgment and execution, under which said property was sold, in nowise impeached or disputed at the time of the purchases made by these respondents, so far as known to respondent at the time of his or their joint purchase.

Respondents further answering, claim that said compl't has not, either in law or equity, as against these respondents, any right or title to any of said parcels of real estate, or to any relief in equity, as against them.

That the allegation in said bill, that complainants verily believes that the time to redeem said premises from said sale did not expire until the 2d day of December, 1852, is not true.

That the further claim, that said Woolev had in his hands money of complainants applicable to the payment of said execution, and that he would have paid the sum if demanded, is also, as respondents believe and charge, wholly false.

That compl't had no just ground for any such claim or belief; and that the further claim, that compl't held in his own right the personal property alleged, def'ts also deny; and aver the said compl't was in embarrassed circumstances, and did not hold in his own name and right any personal property out of which said judgment could have been made. Respondents further answering state, that the further allegation in said bill, that complainant *is* believes that said northwest quarter of the northeast quarter of section 12, in township 28 north, of range 23 west, was not sold by said sheriff on the 2d day of October, 1852, nor at any other time, is likewise untrue.

They further state, that lot No. two, and said northwest quarter of the northeast quarter of sec. 12, lie together, and form but one tract and parcel, and could not be sold separate without manifest injury to the whole; that the same was separately sold from the residue of said property, as one tract and parcel, for the sum of $55,00, to said Castner and Hinkley, as compl't well knows.

Respondents further state, that after the due execution, delivery of said sheriff's deed to said Hinkley and Castner, and after the pretended claim that said sale was irregular, as in said motion now appears to have been made, was found, adjudged and determined against said Charles Symonds by said court, and after said sale had become absolute, by reason that no part of said prop-

erty had been redeemed, and before the exhibition and filing of complainant's bill, and before the commencement of this suit, on the allowance or issuing of any writ or order of injunction therein, the said John M. Castner and John S. Hinkley, so being the owners of said property, for the consideration of five hundred dollars, duly made, signed, sealed, acknowledged and delivered, to said Lafayette Emmett, their deed, in and by which, for the valuable consideration last aforesaid received of said Emmett, they conveyed to said Emmett, his heirs and assigns, said lot two and said northwest quarter of the northeast quarter of section twelve, in township No. twenty-eight north, of range No. twenty-three west. That said Lafayette Emmett, as the bona fide purchaser thereof, for the consideration aforesaid, became seized of all the right, title, interest and claim of said Symonds and said Castner and Hinkley of, in, and to said real estate so to him conveyed; and claims and insists that, as against said Emmett, who still holds said title and property, said complainant is not entitled to any relief whatever. Respondents refer to and make said deed an exhibit.

These respondents insist and claim that compl't is barred of relief by said former adjudication, and that he is concluded thereby. That said complainant is not permitted to dispute, contradict, or deny the truth of the facts stated in the return of said sheriff to said writ, or the recitals in said sheriff's deed; that the same is in law conclusive; and that the remedy of said complainant, if his said complaint be true, is against said sheriff, who is amply able to respond.

They pray the same advantage and benefit by this their answer as they could or might have taken and had by way of plea or demurrer to said bill. These respondents deny all fraud or combination charged in said bill; and having fully answered, pray their reasonable costs and ch'gs by them in this behalf most unjustly sustained.

H. L. MOSS,
L. EMMETT.

JAS. SMITH, Jr., *Sol. for Defendants.*

TERRITORY OF MINNESOTA,
Ramsey County, ss.

Henry L. Moss, being sworn, says that he is one of the above named defendants; that he has heard the foregoing answer read, and knows its contents; that the same is true of his own knowledge, except as to matters therein stated to be on information or belief, and as to those matters he believes it to be true.

H. L. MOSS.

Sworn to by Henry L. Moss, and by him subscribed before me, this 6th day of October, A. D. 1856.

GEO. HEZLEP,
Notary Public, M. T.

Filed Dec. 9, 1856.

GEO. W. PRESCOTT, *Clerk.*

To the Hon'ble Moses Sherburne, Judge of the District Court for the district in which the county of Ramsey, Minnesota Territory, is situate, in chancery sitting:

Lafayette Emmett and Henry L. Moss, complaining, respectfully show unto your honor, that heretofore, to wit, on the 26 day of January, 1853, Charles Symonds, of the county aforesaid, filed in the court aforesaid his bill in chancery, in and to which one John M. Castner and John S. Hinkley were then and there made parties defendant; that the said Symonds, in and by his original bill set forth, in substance, that said Castner & Hinkley, on the 8th day of May, 1852, recovered in said county judgment against him, said Symonds, for $121 74, on an indebtedness due or accruing prior to August 1st, 1851; that afterwards a writ of execution issued upon said judgment to the then sheriff of said county, in due form of law; that George F. Brott, sheriff aforesaid, sold or pretended *or pretended* to sell, as the property of said Symonds, lots No. 14 and 15, in block No. 33, in Rice & Irvine's addition to the town of Saint Paul; and also lot two, in section numbered 12, in township number twenty-eight north, of range No. 23 west, and of which said Symonds was part owner; that the aggregate amount for which all of said property sold is $150, and that said Castner & Hinkley are the purchasers thereof at said sale; that owing to sudden illness, said compl't was unable to attend said sale; that from a printed notice of said sale, and in the sheriff's return to his said writ, it is pretended that a levy was made upon said lands on the 17th day of August, 1853, and also upon the northwest quarter of the northeast quarter of said section 12, township 28 north, of range 23 west, of which compl't is also part owner; that on the day last aforesaid, said compl't was absent at Boston, Massachusetts.

That Austin Wooley and Issabella Wooley were, in the year 1852, living upon lots 14 and 15, in a dwelling situate thereon, as house-keepers for said compl't; that no copy of said execution was left with either of said occupants, or posted in a conspicuous place thereon, or upon any of said lots; that sheriff did not enter upon or levy on said lands, or any of it; and that only three notices of said sale was posted in said county, as he is informed and believes. That compl't returned to St. Paul Sept. 5th, 1852; and not until ten days before the time of said sale did he know said execution had issued; that he was unable to pay the amount of said execution before or until the 2d day of December, 1852. That said

Wooley was the agent of said compl't; and compl't avers he believes said Wooley had, on the 17th of August, 1852, moneys belonging to said compl't nearly sufficient to satisfy said execution, and that said Wooley would, he believes, have paid the same, if demanded, having paid other debts. The said compl't was possessed of personal property, not exempt from execution on said 17th August, among which was one hundred cords of wood, worth at least $200, situate on said premises occupied, and about 300 tons of ice, in an ice-house in St. Paul, and other property accessible to said sheriff. That a few days prior to Dec. 2d, 1852, s'd compl't asked said sheriff when the time to redeem would expire; that said sheriff said he thought said time would expire on the 2d of Dec. aforesaid; and that compl't believes said time to redeem said premises did not expire until that day. That on the day last aforesaid he tendered to said sheriff $146 68, being the amount estimated by him to be due for principal, interest, and costs—the amount paid by said pl'ffs in execution on said purchase, if any, being then in the hands of s'd sheriff. That when he paid said sum he was ignorant that no copy of said execution had been left or posted up; that lot 14 sold for $30 00, lot 15 for $65 00, and lot 2 for $55 00, making $150 00. That said sheriff filed his return, annexed to said execution in the clerk's office, and that said return did not specify a sale of the said northwest quarter of the northeast quarter of sec. 12 aforesaid, when returned, and for several days afterwards. That he is informed the same was not sold by said sheriff on the 2d October, 1852, or at any time. That said return has been fraudulently and without leave of court altered, as he believes by the instigation of said Castner & Hinkley, so as to appear thereby that said tract was sold with lot 2 for $55 00. That said sheriff executed a deed to said Castner & Hinkley for all said tracts which they have fraudulently received, and which was recorded Dec. 8, 1852, in book D of deeds, pages 559 and 560, register of deeds' office, and are endeavoring to convey and dispose of said lands in fraud of your orator's rights. That said land is worth, exclusive of incumbrances and the interests of part owners, $2,500.

That compl't, Jan'y 26, 1853, tendered to said defendants $153 35, amount of said bid, with interest, and brings the same into court. That said Castner & Hinkley refuse to release said land from the of said deed. Said bill requires said defendants to answer the same under oath, prays an injunction, and prays that, in case of the refusal of said defendants to disencumber said lands, that the decree of the court to disencumber the same; that the sale of said sheriff may be set aside and cancelled, and for general relief, and process of subpœna and injunction. To which bill said Castner & Hinkley, on the 5th day

of October, 1853, duly filed their answers; to which said compl't replied on the day of 1853.

That on the day of November, 1856, your complainants were made parties defendants to the same effect as by supplemental bill; and as such defendants, herewith file their answers to said original bill. That these complainants are entitled in equity to affirmative relief; which, as they are advised, they cannot regularly obtain, save by cross-bill.

They therefore respectfully state, in addition to the matters and facts in their joint and several answers herewith filed, and, without being specially here again repeated, make part hereof, that said Charles Symonds, after the rendition of said judgment in said bill named, on the 29th of May, 1852, executed a deed of mortgage on said lots 14 and 15, in block No. 33, in Rice & Irvine's addition to Saint Paul aforesaid, to one David Kinghorn, to secure a note of $550, made by said Symonds, payable 4 months after s'd date, at 2½ per cent. per month interest, which mortgage was recorded on said 29th of May. That said Kinghorn, in Feb'y, 1853, and after the purchase and conveyance of said lots No. 14 and 15 to said complainants, and after the record thereof, commenced a suit for the foreclosure of said mortgage, in or to which these complainants were not parties, nor was either of them. That said Symonds afterwards, on or before the 22d of September, A. D. 1854, paid off and lifted said note; and therefore said Kinghorn, at his instance and request, having received the full amount secured in and by said deed of mortgage, duly satisfied the same upon the record thereof in the register of deeds' office; by means of which said mortgage became void and of no force, and said suit should have been dismissed. That said Symonds, for the purpose of injuring these complainants, fraudulently, and without any warrant or authority, withheld from said court the fact that said mortgage was fully paid and satisfied, and permitted and procured the entry of a decree in said case in favor of said Kinghorn and against him, said Symonds, for the sum of $955 72, and caused the same judgments to be docketed on the 18th of Nov., 1854, and procured a reference for the sale of said lots 14 and 15, and afterwards procured an execution and order of sale on said fraudulent decree to issue, by which the referee in said decree named, on the 20th day of January, 1855, offered said lots for sale, at which sale said Symonds was permitted to and did bid; and in pursuance of said sale, George W. Prescott, esq., referee, supposing he had authority so to do, on the 23d day of January, in the year of our Lord one thousand eight hundred and fifty-five, executed a deed to said Symonds, reciting said judgment and decree, sale and purchase, thereby purporting to convey, in consideration of $986 59; which said deed was fraudulently received by said Symonds, and was at his instance filed for record January 25, 1855, and is recorded in

the office of register of deeds of Ramsey county aforesaid, in book R of deeds, pages 345; which said deeds so obtained is held by said Symonds, and is a cloud upon the title of these complainants.

These complainants aver, that Castner & Hinkley procured a good and valid title to all said lots and parcels of ground by reason of said sheriff's sale and the deed of said sheriff, duly made and delivered in pursuance thereof.

These complainants further represent, that after said indebtedness was contracted, (as they believe,) upon which said action was founded and for which said judgment was rendered against said Symonds in favor of Castner & Hinkley, and before the first day of December, 1852, said Symonds, for the purpose of cheating and delaying his creditors, being then indebted and embarrassed, combined and confederated with one Richardson Moffitt, to delay and hinder his creditors, and especially said Castner & Hinkley, in the collection of their claims against said Symonds; and for the pretended consideration of $5,000, conveyed by deed in due form of law to said Moffitt, in fee simple, said lots No. 14 and 15, in Rice and Irvine's addition aforesaid. That no actual consideration was paid by said Moffitt, as compl'ts charge and believe. That said Symonds caused said deed to be recorded on the 12th day of October, 1852, at 10 o'clock a. m., before which time no record thereof had been made or deposit for record. That said deed, as to said Castner & Hinkley and their assigns, was fraudulent and void; yet as between said Symonds and his fraudulent grantee it was good and effective, so as to vest in said grantee, from and after the 12th day of October, 1852, the exclusive right (save and except the rights secured to creditors) to redeem said land, lots 14 and 15, from said sale; and that in truth and in fact said Symonds had not any right or title to redeem said premises at the time he avers he tendered the amount of said judgment to said sheriff, Dec. 2, 1852, nor at any other time between the 12th of October, 1852, and the time this suit was commenced.

Compl't further state, that at the time of said sale to Castner & Hinkley they had not, nor had either of them, or said sheriff, any notice whatever, either actual or constructive, that any such deed or conveyance had been made by said Symonds to said Moffitt, or that it was pretended he had or claimed any interest in said property; that neither Castner & Hinkley, or either of these defendants, had any notice whatever or knowledge that any such deed had been made or placed upon record by any one until long after this suit was brought, and not until after the answers of said Castner & Hinkley had been filed thereto. That, in pursuance of said original understanding and fraudulent agreement between said Symonds and said Moffitt, said Moffitt, on the 14th day of April, 1852, executed, in the State of Massachusetts, a general power of attorney to said Charles Symonds, by which said Symonds was

authorized to rent and control said lots 14 and 15, and generally to do and perform anything in relation to said property that he, said Moffitt, as owner thereof, could perform, if personally present; which said power of attorney said Symonds caused to be recorded in book F, page 94, shortly after the date aforesaid, and now claims that said Moffit, for the consideration of $5,000, on the 2d of May, 1854, has quit-claimed and conveyed said property to him, said Charles Symonds.

Compl'ts further represent, that if any such quit-claim deed has been made, it was made long since this suit was commenced by said Symonds against said Castner and others, and is a part and parcel of said fraudulent understanding between said Symonds and said Moffitt. And further states and ch'gs that, in part, the business of said Symonds, in the State of Massachusetts, at the time stated in said original bill, was to concoct and carry out, in part, said scheme of fraud. That at the time said original bill was filed, these compl'ts were and still are the lawful owners of said property, lots 14 and 15, and that said Emmett had title to and owned the residue of said real estate, and that said Symonds had no title, claim, or right of redemption to any part thereof.

Complainant now further represents, that after the final determination of said motion, in said answer of these complainants named, and after the full time for redemption had expired, and all said lots and parcels then remaining wholly unredeemed, and after the due execution, delivery, and record of said sheriff's deed to said Castner & Hinckley, and before the commencement of said suit of said Symonds against said Castner & Hinkley or the filing of said original bill therein, and before the issuing or allowance of any writ or order of injunction, the said Castner & Hinkley, in good faith and for a valuable consideration, to wit, $1,000, conveyed in fee simple said lots No. 14 and 15 to these complainants, who still own and are entitled to said lots; and that said Castner & Hinkley, in like good faith and for a valuable consideration, after the due execution and delivery of said sheriff's deed, and then and there being the owners of said lot two and of the northwest quarter of the northeast quarter of section No. twelve, (12), township twenty-eight north, of range twenty-three (23) west, and before the issuing or allowance of any injunction in said case or any case, against said Castner & Hinkley, and before the filing of said original bill, made, executed, and delivered, in due form of law, a deed in fee simple to said Lafayette Emmett, of said tracts lastly above described; and that, by means of said purchase and conveyance, the entire legal right and equitable title in and to said tracts lastly above described vested in said Emmett, who is the sole owner and holder thereof; and that all the said claims of said compl't to any of said property are against equity and good conscience.

Said deeds are referred to and made part hereof; that although said sale and proceedings are valid, and have been so adjudged, as in said answers set up, yet said Symonds, contrary to equity and good conscience, is claiming title to said real estate; these compl'ts make said Symonds and Castner & Hinkley defendants hereto, and call upon them to answer all and singular the allegations aforesaid—an answer under oath being waived and not required; and they pray process of subpœna.

And compl'ts further pray that this their cross-bill may be heard at the same time and in the said original bill, and upon the testimony in said case now taken and to be hereafter taken; and thereupon such hearing, that such decree be made and pronounced as will the joint and several titles of these complainants to all said real estate, according to their respective interests; that said clouds be removed from their said title, said deeds to said Symonds cancelled; and that they may have such other and further decree and relief as the nature of the case and equity and good conscience may require.

JAMES SMITH, Jr.,
Sol. for Emmett and Moss, Compl'ts aforesaid.

TERRITORY OF MINNESOTA,
Ramsey County, ss.

Lafayette Emmett, being sworn, says he is one of the complainants aforesaid; that he has heard the foregoing bill of complaint read, and knows its contents; that the same is true, of his own knowledge, except as to matters therein stated to be on information or belief, and as to those matters he believes it to be true.

L. EMMETT.

Sworn to by L. Emmett before me, this 8th day of Dec., 1856.
LYMAN C. DAYTON,
Notary Public.

Filed Dec. 9, 1856.
GEO. W. PRESCOTT, *Clerk.*

In the District Court, 2d district, Ramsey Co.

LAFAYETTE EMMETT, HENRY L. MOSS, against CHARLES SYMONDS and others. } Cross-bill—In Chancery.

Charles Symonds, named as defendant in the above cross-bill, filed by Lafayette Emmett and Henry L. Moss, named as plaintiffs therein, founded upon the original suit in chancery in said court, wherein the said Charles Symonds is plaintiff, and John M. Castner, John S. Hinkley, Lafayette Emmett, and Henry L. Moss, defendants, excepts and objects to said cross-bill, and specifies therein the following grounds of objection and exception:

1. Because the original bill in said original suit has reference to a certain sheriff sale therein set forth, and the sheriff's deed thereon to the said Castner and Hinkley; and the matters set forth in said cross-bill are distinct, and have no reference to anything material thereto.

2. Because the remedy sought in said cross-bill is at law, and not at equity, in that the statute, in such case made and provided, provides a remedy at law to determine adverse claims, estates, or interests, and in that a remedy at law is provided to recover possession of property unlawfully detained.

3. Because the relief prayed by the said Emmett and Moss by their cross-bill is not allowable, by way of cross-bill.

4. Because the allegations upon which the said cross-bill is founded are inconsistent with the answers of the said Emmett and Moss to the said originall bill, in that a certain mortgage executed by said Symonds to David Kinghorn is set up, and a proceeding of foreclosure thereon to final decree and sale, as to lots number fourteen and fifteen, in block thirty-three, in Rice and Irvine's addition to Saint Paul; and it appears that said Castner and Hinkley were parties defendant thereto, and therein made defence, by their answers, that they had purchased the said property at the said sheriff's sale, and claimed the same under the deed thereon executed to them by the sheriff; and it appears that the court, by its decree in favor of the said David Kinghorn, found the said sheriff's sale to be invalid; and it also appears that the said Emmett and Moss gave no notice of their alleged title under the said Castner and Hinkley, and did not place the same on record prior to the commencement of said foreclosure suit; and that after the commencement thereof the said Emmett and Moss had notice of said suit and the said defence of Castner and Hinkley, and did not intervene or claim to be made parties defendant therein. Also, in that the said cross-bill sets up a certain conveyance, alleged to have been executed by the said Symonds to Richardson Moffitt, recorded on the 12th day of October, 1852, as to the said lots 14 and 15, which said conveyance is dated May 29th, 1851; and the said Emmett and Moss, in their answer to the said original bill, allege that, on the 8th day of May, 1852, the said Symonds had the legal title to and owned and possessed said lots No. 14 and 15, and at the time of the docketing of the judgment under which the said sheriff's sale was had; and it appears by the said cross-bill that the sale under said mortgage divested any title in the said Moffitt, the said mortgage having been recorded long prior to the recording of the said alleged conveyance to the said Moffitt.

5. Because the said cross-bill is multifarious.

6. Because all the allegations therein included, after the words "they therefore respectfully state, in addition to the matters and

facts in their joint and several answers herewith filed, and without being specially here again repeated made part hereof," and before the words "complainants now further represent, that after the final determination of said motion," comprising the 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, and 21st folios of said cross-bill, are impertinent, immaterial, and irrelevant.

7. Because the said cross-bill is irregular, and contrary to the statutes in such case made and provided.

8. Because the said cross-bill is contrary to the rules and practice in equity.

HENY J. HORN,
With HOLLINSHEAD & BECKER,
Atty's of Symonds.

To JAMES SMITH, Esq.,
Att'y of Emmett and Moss.

DEAR SIR: Please take notice, that the said Charles Symonds claims to have the cross-bill above referred to dismissed, upon the objections, exceptions, and grounds above stated, and that thereupon a motion will be made on behalf of the said Charles Symonds, before the Honorable Moses Sherburne, judge of the said court, at his chambers at the capitol, in the city of Saint Paul, on the 14th day of January, 1857, at ten o'clock in the forenoon, to dismiss the said cross-bill, upon the objections, exceptions, and grounds before stated, or at any time when the original cause upon which the said cross-bill is founded shall be called for hearing; and that the original bill, answers, replication files, report of the referee, and the evidence and proceedings in said original cause, together with the said cross-bill, will be read in support of said motion.

Yours, respectfully,

HENRY J. HORN,
With HOLLINSHEAD & BECKER,
Atty's of Symonds.

December 23, 1856.

District Court, 2d dist., Ramsey county.

LAFAYETTE EMMETT & H. L. Moss
vs.
CHARLES SYMONDS and als.

In Chancery.

Exceptions of Charles Symonds to cross-bill, and motion to dismiss the same.

It is stipulated that this motion shall be argued on the original cause; and I admit service of a copy of the within notice.

JAMES SMITH, JR.
Sol. for compl'ts E. & Moss.

Dec. 24, 1856.

Filed Dec. 24, 1856.

G. W. PRESCOTT, *Clerk.*

HRNRY J. HORN,
With HOLLINSHEAD & BECKER,
Atty's of Symonds.

In Chancery.

In the District Court of the 2d judicial district of the Territory of Minnesota.

RAMSEY COUNTY, *ss.*

LAFAYETTE EMMETT, H. L. Moss,
against
CHALES SYMONDS and others. } Per Cross-bill.

The several answer of Charles Symonds, a defendant named in the said cross-bill, to the cross-bill aforesaid of Lafayette Emmett and H. L. Moss, named as plaintiffs therein.

The said Charles Symonds, saving all exceptions to the said cross-bill, answers thereto, and says:

That he denies that the said mortgage, executed by himself to the said David Kinghorn, or the debt thereby secured, was ever paid or discharged, save by the said sale ordered by the court upon the proceedings to foreclose the same, and says that he has no knowledge nor information sufficient to form a belief as to whether the said David Kinghorn entered satisfaction on the record thereof; but this defendant denies that any such entry of satisfaction, or any entry upon the record of said mortgage, was made at his instance or request, or with his privity, and denies that the said mortgage ever became void, or was discharged, save by the sale aforesaid; and this defendant denies that he procured the said decree, or procured the said judgment to be docketed, or procured the said execution or the said reference, or that the said decree or other proceedings were fraudulent, or that the said deed executed by the said referee was fraudulent, or that this defendant in any manner was guilty of any fraud, concealment, connivance, or collusion in the said proceedings; and says that the said proceedings of foreclosure was conducted to final decree, execution, and sale by the said David Kinghorn, adversely to this defendant, and fairly and regularly, and prays that the same may be referred to for greater certainty.

This defendant, further answering, says that he denies all charges of fraud, combination, or confederacy, wherewith he is charged by the said complainants, in reference to a certain conveyance executed by this defendant, on the 29th day of May, 1851, to Richardson Moffitt, and says that the same was given in good faith to secure the said Moffitt for a certain indebtedness owing to him by this defendant, and says that the same was caused to be re-

corded by the said Moffit; that at the time *of the time* of the executing the same this defendant was not insolvent, and that the same was not intended to delay, defeat, or defraud or hinder any creditors of this defendant, or to prejudice the rights of any one. And this defendant denies that the said premises were quit-claimed to him by the said Moffitt through any fraudulent understanding or collusion, or with intent to injure or prejudice any one in his just rights; and says that the same were quit-claimed by the said Moffit by reason of the indebtedness of this defendant, intended to be secured thereby to the said Moffitt, having been long prior thereto paid off, and because this defendant was thereon equitably and justly entitled to have again his said estate.

This defendant further answering, avers that, at the time of the said sheriff's sale, he was justly and equitably entitled to redeem the said premises, by reason of his interest and estate therein; and shows herein that his interest to redeem as aforesaid is fully admitted by the answers of the said Emmett & Moss, in the said original cause referred to in the said cross-bill.

This defendant further answering, denies that the sheriff's sale and the deed thereon to said Castner & Hinckley are valid, and says that the same are irregular, invalid, void, and contrary to equity and conscience, as he has fully shown and made out by his original bill in the said original cause; and that this defendant further denies that the said alleged and pretended conveyances of the said Castner & Hinkley to the said Emmett & Moss, and to the said Emmett, were made in good faith, or for a good or valuable or any consideration, or that they were made without any notice or knowledge of the rights of this defendant, or of the proceeding of this defendant in the said original cause, and says that the pretended conveyances were devices to hinder, molest, and prejudice this defendant in the prosecution of his just rights; and that the said Emmett & Moss are not bona fide holders or owners of said premises, or of any estate or interest therein; and that the said Emmett & Moss had full notice of the rights and equities of this defendant, as set forth in his said bill, prior to the said pretended conveyances.

And this defendant denies that the said sheriff's sale and sheriff's deed thereon, executed to the said Castner & Hinkley, has ever been adjudged or determined to be valid by this court, or any other court.

This defendant further answering, denies all allegations of frauds, collusion, or confederacy, whereby he is charged in said cross-bill; and thereon prays that the said cross-bill may be dismissed, and that this defendant may have his relief, as prayed in his said original bill.

HENRY J. HORN,
With HOLLINSHEAD & BECKER,
Att'ys of Symonds.

Filed Dec. 24, 1856.

G. W. PRESCOTT.

District Court, Ramsey county, 2d district.—In Chancery.

LAFAYETTE EMMETT and Henry L. Moss
vs.
CHARLES SYMONDS.
} Cross-bill.

These replication of Lafayette Emmett and Henry L. Moss, complainants in said cross-bill, to the answer of Charles Symonds, defendant.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without that any other matters or things in said answer contained, material or effectual in the law to be replied unto and avoided, traversed, or *derived*, is true; all which matters and things these repliants are and will be ready to aver and prove, as this hon. court shall direct, or in and by their said bill have already prayed.

JAMES SMITH, JR.,
Sol. for Emmett & Moss.

Filed July 6th, 1857.

G. W. PRESCOTT, *Clerk.*

Territory of Minnesota, District Court, second district, Ramsey county.

CHARLES SYMONDS
vs.
JOHN M. CASTNER and John S. Hinkley.
} In Chancery.

GENTLEMEN: Take notice, that before the Hon. Moses Sherburne, judge of this court, at his chambers at the capitol, in the city of St. Paul, in said county of Ramsey, on the 8th day of May next, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, application will be made in behalf of the plaintiff in this suit for an order of reference to a special master in chancery, to be appointed by this court, or to such officer as this court may direct and appoint to take the proofs and evidence of the above named parties to this suit, upon matters in issue upon the bill, answer, and replication filed in the said cause, and to report the same to this court, for *for* such order as the said court may

deem just and expedient in the premises; and that the bill, answer, replication, and file in the said cause will be read in support of the said application.

St. Paul, Apr. 26, 1856.

HOLLINSHEAD & BECKER,
Attorneys for Plaintiff.

To Messrs. AMES & VAN ETTEN,
Def'ts Attorneys.

Service of copy of the within notice is hereby admitted, April 26, 1856.

BRISBIN & BIGELOW.

Filed May 8, 1856.

G. W. PRESCOTT, *Clerk.*

In the District Court, in and for the 2d judicial district of the Territory of Minnesota.

RAMSEY COUNTY, *ss.*

CHARLES SYMONDS
against
JOHN M. CASTNER and JOHN S. HINKLEY. } In Chancery.

And now, upon application of the attorneys of the plaintiff in this action, and upon proof of the service of due notice thereof, according to the statute in such case made and provided, it is ordered that Geo. W. Prescott, esq., be appointed special master in chancery, to take the proofs and evidence of the above named parties to the said action, upon all matters in issue upon the bill, answer, and replication filed in the said cause, with directions to report the same to this court, and that the said cause be referred to the said master accordingly.

M. SHERBURNE, *Judge.*

At chambers, May 8th, 1856.

Filed May 8, 1856.

G. W. PRESCOTT, *Clerk.*

DISTRICT COURT, 2D DISTRICT,
County of Ramsey, ss.

To the Honorable the Judge of the District Court for the Second Judicial district, County of Ramsey.

In pursuance of an order of court, made in the following entitled cause, to wit:

CHARLES SYMONDS
against
JOHN M. CASTNER and JOHN S. HINKLEY. } In Chancery.

Which order is dated May 8th, 1856, referring the said cause to

the undersigned, to take the proofs and evidence of the above named parties to the said action upon all matters in issue upon the bill, answer, and replication filed in said cause, I do report, that the following proceedings were had before me, at the several times and in the manner hereinafter specified, at my office, in the capitol building, city of Saint Paul, and county of Ramsey, namely:

Proceedings before Referee.

District Court.

TERRITORY OF MINNESOTA,
County of Ramsey.

CHARLES SYMONDS
against
JOHN M. CASTNER and JOHN S. HINKLEY. } In Chancery.

(Depositions of witnesses produced, sworn, and examined in the above entitled cause, on the part of the complainant.)

Oct. 9, 1856.

The respective parties, by their counsel, stipulate in writing that the hearing of the testimony in this cause be continued for two weeks, from this day, at 10 o'clock a. m.; and the hearing is so continued accordingly.

G. W. PRESCOTT, *Referee.*

Thursday, Oct. 23, 1856.

This day came the complainant in person, and by counsel; and the defendants not appearing, and having no counsel present, on motion of plaintiff's counsel, the hearing is further continued until Thursday next, Oct. 30, 1856, at 11 o'clock a. m.

G. W. PRESCOTT, *Referee.*

Thursday, Oct. 30, 1856.

This day came complainant's counsel; and no one appearing on part of defendants, the hearing in this cause is, on application of complainant's counsel, continued to Thursday next, Nov. 6, 1856, at ten o'clock in the forenoon.

GEO. W. PRESCOTT,
Referee.

Thursday, Nov. 6, 1856.

This day complainant's counsel came; and no one appearing on part of defendants, the hearing in this cause is, on application of complainant's counsel, continued to two weeks from to-morrow, Nov. 21, 1856, at ten o'clock in the forenoon.

GEO. W. PRESCOTT,
Referee.

Friday, Nov. 21, 1856.

This day complainant's counsel came; and no appearing on part of defendants, the hearing in this cause is, on application of complainant's counsel, continued to one week from this day, at 10 o'clock a. m.

G. W. PRESCOTT, *Referee.*

Friday, Nov. 28, 1856.

This day complainant's counsel came, and filed with referee the stipulation of parties for the admission of written testimony, which is hereto annexed, and marked "A;" and no one appearing for defendants, the hearing is again continued for one week from this day, at ten o'clock a. m.

GEO. W. PRESCOTT,
Referee.

Friday, Dec. 5, 1856.

By consent of the counsel for both parties, the hearing in this cause is continued for one week from this day, at 10 o'clock a. m.

GEO. W. PRESCOTT, *Referee.*

Friday, Dec. 12, 1856.

This day came the counsel for both parties; and thereupon said complainant's counsel offered in evidence, pursuant to the stipulation heretofore filed:

1st. The judgment-roll in the case of Castner & Hinkley vs. Brawley & Symonds, numbered 209, in the register and files in said district court, Ramsey county.

2d. The deposition of Edmund Rice, a witness examined in the case of Kinghorn vs. Symonds, Castner & Hinkley, in chancery, taken before Jas. K. Humphrey, esq., special master, Nov. 24, 1853, on file in register, number in said court 456.

3d. Deposition of Charles Symonds, witness in same case, on file in same action; examination dated Nov. 24th, 1853.

4th. Deposition of Geo. F. Brott, witness in same case, on file in same action; examination dated Nov. 30, 1853.

5th. Exhibit "A" in special master's report in same case, and on file therein.

6th. Exhibit E, in same case, report.

7th. Exhibit "F," in same report.

8th. Judgment-roll and record of judgment in case of David Kinghorn vs. Symonds, Castner & Hinkley, numbered 456 in said court, filed Nov. 15, 1854.

The defendants' counsel objected to the admission of any and all of the above testimony; and the same was taken subject to *subject to* such objection.

Plaintiffs counsel here closed.

Defendants, by their counsel, offered in evidence, pursuant to stipulation, the following:

1st. The original writ of execution in the case of Castner & Hinkley vs. Brawley & Symonds, No. 209, before referred to, with the sheriff's return thereto annexed.

2d. Judgment-roll in same case, No. 209.

3d. Deposition of John M. Castner, taken Jan'y 4, 1854, in case of Kinghorn vs. Symonds, Castner & Hinkley, No. 456. above referred to, and contained in report of the special master in said case.

4th. Deposition of Henry L. Moss, taken Jan'y 10, 1854, contained in same report.

5th. Deposition of J. R. Brewster, taken Jan'y 4, 1854, contained in same report.

6th. Deposition of Charles M. Daniels, contained in same report, taken Jan'y 10, 1854.

7th. Deed of George F. Brott, (original deed,) to Castner & Hinkley, contained in same report.

8th. Deed of Castner & Hinkley to Henry L. Moss & L. Emmett, contained in same report, for lots 14 and 15, B. 33, in Rice & Irvine's addition to St. Paul.

9th. Original deed from John M. Castner & Jno. S. Hinkley to Lafayette Emmett, for residue of premises in controversy, a copy of which is hereto annexed, marked Exhibit "B;" which copy is substituted for said original, by consent, and the original is to be produced on trial.

10th. Motion filed by Charles Symonds, Jan'y 22, 1856, to set aside the sale in the case of Castner & Hinkley vs. Brawley & Symonds, before referred to; also, testimony of Geo. F. Brott, in his affidavit, taken Jan'y 17, 1853, in same motion; also, affidavit of John M. Castner, same date, in same motion.

11th. Affidavit of Geo. F. Brott, taken before H. Z. Hayner, then judge of said court, Jan'y 8th, 1853, filed in case of Castner & Hinkley vs. Brawley & Symonds, above referred to; also copy of order of court, denying motion, on file in said cause, filed Jan'y 22, 1853; also, certified copy of mortgage of Chas. Symonds to David Kinghorn, hereto annexed, marked "C;" also, certified copy of deed from Chas. Symonds to Richardson Moffitt, hereto annexed, marked "D."

12th. Copy of the published map of St. Paul, showing location of premises in controversy.

Plaintiff's counsel objected to the admission of any and all of the above testimony; and the same was taken, subject to such objection.

Defendants' counsel here closed; and no further evidence was offered by either party. GEO. W. PRESCOTT, *Referee.*

In the District Court of the 2d (late 1st) district of the Territory of Minnesota, Ramsey county.—In Chancery.

CHARLES SYMONDS
vs.
JOHN M. CASTNER and others.

It is hereby stipulated, by the parties in the above entitled cause, acting by the attorneys of each respectively, that the depositions and exhibits contained in the report of James K. Humphrey, esq., special master in chancery, in the case of David Kinghorn against Charles Symonds and others, in this court, or any of said depositions or exhibits, may be placed in evidence by either of the parties hereto before George W. Prescott, esq., the referee in this action, and may be reported by said referee, as well as used and read on the final hearing of this cause, with the same effect as if the same had been originally taken and given in evidence in the action before the said referee; the said parties hereto, however, reserving all objections to said depositions or exhibits, which would be valid if the same were so originally taken and given in evidence in this action before the said referee.

It is further stipulated, that the affidavit of George F. Brott, made in the case of John M. Castner & John S. Hinkley vs David F. Brawley & Charles Symonds, in this court, on the 17th of January, 1853, on the motion to set aside the sale in said last mentioned action, may be read as testimony of the said George F. Brott, in this action, before the said referee, or upon the final hearing of this cause, with the same effect as if the said Brott had been examined as a witness on behalf of the party offering the same, and testified to the facts therein set forth before the said referee; reserving all objections thereto which would be valid if the said Brott had been so examined, and had testified to the facts therein stated.

It is further stipulated, that the records of this court in the cases of David Kinghorn against Charles Symonds and others, and John M. Castner & John S. Hinkley against David F. Brawley & Charles Symonds, above referred to, with the judgment-rolls, files, and proceedings therein, may be placed in evidence before the said referee, or used and read on the final hearing of this cause, by either of the said parties, reserving all objections to their competency, relevancy, or as evidence in this cause.

St. Paul, Nov. 28th, 1856.

HENRY J. HORN,
With HOLLINSHEAD & BECKER,
Att'ys of Pl'ff.

JAMES SMITH, JR.,
Sol. for Castner, Hinkley & Emmett, and Moss, Defendants in this case.

This indenture, made the twenty-eighth day of January, in the year one thousand eight hundred and fifty-three, between John M. Castner and John S. Hinkley, of the first part, and Lafayette Emmett, of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of five hundred dollars, lawful money, to them duly paid before the delivery hereof, have bargained and sold, and by these presents do grant and convey, to the said party of the second part, his heirs and assigns, forever, all that tract or parcel of land lying and being in the county of *county of* Ramsey, and Territory of Minnesota, and being the one undivided half of the northwest quarter of the northeast quarter, and lot number two, of section number twelve, in township number twenty-eight north, of range number twenty-three west, with the appurtenances, and all the estate, title, and interest of the said parties of the first part, do hereby covenant and agree with the said party of the second part, that, at the time of the delivery hereof, the said parties of the first part are the lawful owner of the premises above granted, and seized thereof in fee simple absolute, and that they will warrant and defend the above granted premises in the quiet peaceable possession of the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

(Signed) JOHN H. CASTNER, [SEAL.]
JOHN S. HINKLEY. [SEAL.]

Sealed and delivered in the presence of—
(Signed) PHINEAS S. FISK,
ORLANDO SIMONS.

Exhibit "B," referred to in annexed report; and I certify this to be a full and exact copy of the original deed in said report referred to, and which was produced before me.

GEO. W. PRESCOTT, *Referee.*

TERRITORY OF MINNESOTA,
County of Ramsey.

Be it remembered, that on this 26th day of January, 1853, personally came before the undersigned, John M. Castner and John S. Hinkley, personally known to me to be the identical persons who executed the within deed of conveyance; and they severally acknowledged that they signed, sealed and delivered the within deed, voluntarily and freely, for the uses and purposes therein expressed.

In testimony whereof I hereto affix my name, the day and year above written.

(Signed) ORLANDO SIMONS,
Justice of the Peace.

I hereby certify, that the within deed was filed in this office on the 4th day of March, A. D. 1853, at 12 o'clock m., and was recorded in book E of deeds, on page 286.

M. S. WILKINSON,
Reg. of Deeds.
By H. P. SWEET, *Deputy.*

This indenture, made this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-two, between Charles Symonds, of the county of Ramsey, and Territory of Minnesota, of the first part, and David Kinghorn, of the second part, witnesseth, that the said party of the first part, for and consideration of the sum of six hundred dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, conveyed and confirmed, and by these presents do give, grant, bargain, sell, convey and confirm, unto the said party of the second part, his heirs and assigns forever, all the following described piece or parcel of land, situate, lying, and being in the county of Ramsey, and known and designated as follows, viz:

Lots numbered fourteen (14) and fifteen (15,) in block number thirty-three, in Rice and Irvine's addition to the town of St. Paul, being the same deeded to the same Symonds by H. M. Rice and wife, by deed bearing date the fourteenth day of September, A. D. one thousand eight hundred and fifty.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, in and to the above described premises, to the only proper use and behoof of the said party of the second part, his heirs and assigns forever; and the said party of the first part, for himself, his heirs, executors and administrators, doth covenant and agree, to and with the said party of the second part, his heirs and assigns, that he is well seized in fee of the aforesaid premises, and hath good right to sell and convey the same, in manner and form as above written, and that the same are free from all incumbrances whatever; and that the aforesaid premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person, lawfully claiming or to claim the whole, or to any part thereof, he will forever warrant and defend: Provided, always, that these presents are upon this express condition, that if the said Charles Symonds, his heirs, executors or administrators, shall well or truly pay or cause to be paid to the said David Kinghorn, his heirs, executors, administrators or assigns, the sum of five hundred and fifty dollars, in manner following, to wit, the sum of five hundred and fifty dollars, four months after date,

with interest after date at the rate of two and one-half per cent. per month, according to the condition of a note, bearing date even herewith, executed by the said Charles Symonds to the said David Kinghorn, then and thenceforth these presents and everything herein contained shall cease and be void; otherwise, remaining in full force and virtue.

In testimony whereof the said party of the first part doth hereunto set his hand and seal, the day and year first above written.

C. SYMONDS, [SEAL.]

Sealed and delivered, in presence of—
L. A. BABCOCK,
C. W. BABCOCK.

I hereby certify, that the annexed mortgage has been fully paid and satisfied; and I authorized the same to be discharged of record.

St. Paul, Sep. 22, 1854.

DAVID KINGHORN.

TERRITORY OF MINNESOTA,
Ramsey County.

Attest: LS. M. OLIVER.
Register of Deeds.

TERRITORY OF MINNESOTA,
County of Ramsey.

Be it known, that on the twenty-ninth day of May, A. D. 1852, before the undersigned, personally came Charles Symonds, the grantor to the foregoing and within deed from him, as such grantor to David Kinghorn, to me personally known to be the identical person described in and who executed the said deed; and he acknowledged that he executed the said deed freely and voluntarily, for the uses and purposes therein expressed.

[SEAL.] C. W. BABCOCK,
Notary Public.

Filed May 29, '52, at 3 p. m., and recorded in Book of Mortgages, pages 75 and 76.

OFFICE REG. OF DEEDS,
Ramsey Co., M. Ter.

I, Louis M. Oliver, register of deeds in and for the county of Ramsey, in the Territory of Minnesota, do certify that the foregoing written instrument is a true and correct copy of the original record thereof on file in this office.

Witness my hand and seal of b'd commissioners, at St. Paul, this 12th December, A. D. 1856.

[SEAL] LS. M. OLIVER,
Register of Deeds, Ramsey Co., M. T.

Exhibit "C," referred to in annexed report.
Attest: G. W. PRESCOTT, *Clerk.*

Know all men by these presents, that I, Charles Symonds, of the city of Saint Paul, in the county of Ramsey, and Territory of Minnesota, now commorant of Lowell, in the county of Middlesex and Commonwealth of Massachusetts, grantee, in consideration of five thousand dollars to me paid by Richard Moffat, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, carpenter, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Richard Moffatt, his heirs and assigns, the following described parcels of land, situate and lying in the said county of Ramsey, and Territory of Minnesota, known and designated as follows: In lots numbered fourteen (14) and fifteen (15), in block thirty-three (33), in Rice and Irvine's addition to the city of St. Paul; also lot number sixteen (16), in block thirty-four (34), in Rice and Irvine's addition to the city of St. Paul; also lot number six (6), in block number thirty-three, in Rice and Irvine's addition to the city of St. Paul. The first two lots being the same conveyed to me by Henry M. Rice and his wife, Matilda W., by deed dated September 14th, 1850. The third lot, number six, being the same conveyed by Justice C. Ramsey and others, by deed dated September 25th, A. D. 1850; all of which three deeds are recorded in the office of the register of deeds for Ramsey county, to which reference may be had for a further description of said lands:

To have and to hold the above granted premises, with the privileges and appurtenances thereunto belonging, unto the said Richardson Moffat, his heirs and assigns, to their use and behoof forever. And I, the said Charles Symonds, for myself, my heirs, executors, and administrators, do covenant with the said Richardson Moffat, his heirs and assigns, that I am lawfully seized in fee of the aforesaid premises, and that they are free from all incumbrances; that I have good right to sell and convey the same to the said Richardson Moffat as aforesaid, and that I will—and my heirs, executors, and administrators shall—warrant and defend unto the said Richardson Moffat, his heirs and assigns, forever, against all lawful claims and demands of all persons.

In witness whereof I, the said Charles Symonds, have hereunto set my hand and seal, this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-one.

CHARLES SYMONDS. [SEAL.]

Signed, sealed, and delivered in the presence of—

P. HAGGERTY,
Witness to C. S. F. G. Abbott.

COMMONWEALTH OF MASSACHUSETTS,
County of Middlesex, ss.

Be it known, that on the said twenty-ninth day of May, A. D. 1851, before the undersigned, personally came Charles Symonds, the grantor to the foregoing and within deed from him, as such grantor, to Richardson Moffat, to me personally known to be the identical person described in and who executed the said deed, and he acknowledged that he executed the said deed freely and voluntarily, for the uses and purposes therein expressed.

J. G. ABBOTT,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS.

I, Seth Ames, clerk of court of common pleas, within and for the county of Middlesex, do hereby certify that Josiah G. Abbott, esq., whose name, in his own handwriting, is subscribed to the certificate of acknowledgment of the foregoing deed, was at the date thereof a justice of the peace, within and for the county of Middlesex, duly commissioned and qualified, having authority to receive and certify such acknowledgments, and that all his official acts and certificates in that capacity are entitled to full faith and credit.

In witness whereof I have hereunto subscribed my name and affixed the seal of the said court, which is a court of record, this twenty-ninth day of September, A. D. 1852. [SEAL.]

SETH AMES, *Clerk.*

Filed for record Oct. 12th, A. D. 1852, and recorded in Book D of deeds, fol. 483, &c.

OFFICE OF REG. OF DEEDS,
Ramsey County, M. T.

I, Louis M. Oliver, register of deeds in and for said county, do hereby certify that the foregoing written instrument is a true and correct copy of the original thereof on record in this office.

Witness my hand and seal of this office, at St. Paul, in said county, the 12th day of December, A. D. 1856. [SEAL.]

LOUIS M. OLIVER,
Reg. of Deeds.
Per S. R. OLIVER, *Dep'y.*

Exhibit "D," referred to in annexed report.
Attest: GEO. W. PRESCOTT, *Clerk.*

Which proceedings and exhibits attached I do return and report to your honorable court as all the evidence offered before me, said parties having mutually and expressly stipulated that the original files in said court, particularly specified and referred to in the foregoing proceedings, should be considered and referred to, and used on the hearing of this cause before your honor, as a part

of this report, subject to the exceptions to their admissibility herein before mentioned.

All of which is respectfully submitted.

GEORGE W. PRESCOTT,
Referee (in nature of Special Master.)

Dec. 12, 1856.
Filed Dec. 12, 1856.

G. W. PRESCOTT,
Clerk.

In the District Court of the second judicial district of the Territory of Minnesota, in and for Ramsey county.

CHARLES SYMONDS against JOHN M. CASTNER, JOHN S. HINKLEY, HENRY L. MOSS, LAFAYETTE EMMETT.	In Chancery.

And now, October 15, 1857, this cause having been duly brought on for final hearing upon the bill of complaint of the plaintiff, and the answers of the defendants, and replications thereto, as well as upon the cross-bill of complaint of the defendants, Henry L. Moss and Lafayette Emmett, and the answer of the said plaintiff to said cross-bill and the replications thereto, and upon the report of the referee appointed in said cause, and the proofs and evidence of the said parties; after hearing the arguments of the counsel of the said parties respectively, and examining the pleadings, proofs, evidence, and all proceedings in said cause, and duly considering the same, it is ordered, adjudged and decreed, that the sale made by George F. Brott, as sheriff of said Ramsey county, on the second day of October, 1852, of the premises described in the said bill of complaint, to wit, lots numbered fourteen and fifteen, in block numbered thirty-three, in Rice & Irvine's addition to Saint Paul, and of lot number two, of section number twelve, in township number twenty-eight north, of range number twenty-three west, and also of the northwest quarter of the northeast quarter of section number twelve, in township numbered twenty-eight north, of range number twenty-three west, according to the United States government survey, all lying and being in said Ramsey county, as under a certain execution issued out of this court, upon a judgment entered therein on the eighth day of May, 1852, in favor of John M. Castner and John S. Hinkley aforesaid against David F. Brawley and Charles Symonds, the said plaintiff, be, and the said sale is, in all things, annulled and set aside; and that the deed executed by the said George F. Brott, as sheriff aforesaid, to the said John M. Castner and John S. Hinkley, for said premises, bearing date the sixth day of December, 1852, be

and the same is annulled, set aside, and declared of no effect; and that the said deed executed by the said George F. Brott, as sheriff aforesaid, and also a certain deed executed by said John M. Castner and John S. Hinkley, to Henry L. Moss and Lafayette Emmett, dated the twenty-sixth day of January, 1853, of said lots numbered fourteen and fifteen; and also a certain deed executed by John M. Castner and John S. Hinkley to the said Lafayette Emmett, dated the twenty-sixth of January, 1853, for the remainder of said property referred to and described in the answers of said defendants, be delivered up to this court to be cancelled, and the same are ordered to be cancelled; and that the title of the aforesaid premises be and the same is forever freed and cleared from said sale, said deed executed by said George F. Brott, as sheriff as aforesaid, said deeds executed by said John M. Castner and John S. Hinkley, and from all cloud or incumbrance by reason thereof; and in default of the said deeds being delivered up to this court for cancellation as aforesaid, that this decree shall stand and be recorded, and operate with the same effect as if the said deeds had been so delivered up and cancelled; and that the plaintiff have his reasonable costs and charges.

It is further ordered, that the amount of one hundred and fifty-three dollars and thirty-five cents, money paid into court, shall be deemed a re-payment of the bid or purchase-money and interest for the said premises were sold to the said Castner and Hinkley; and that the said John M. Castner and John S. Hinkley, or their assigns, have leave to take the said money out of court, after deducting therefrom the costs and reasonable charges of the plaintiff.

R. R. NELSON,
Judge 2d District.

Nov. 2, '57.

OFFICE OF REGISTER OF DEEDS,
Ramsey Co., M. T.

I hereby certify, that the within decree was filed in this office for record on the sixth day of November, A. D. 1857, at 5 o'clock p. m., and was duly recorded on book S of deeds, on page 353.

LS. M. OLIVER,
Reg. of Deeds.

District Court, Ramsey county.—In Chancery.

CHARLES SYMONDS
ag'st
CASTNER & HINCKLEY and MOSS & EMMETT.

A bill for relief was filed and suit commenced by the complainant, Symonds, on the 26th day of Jan'y, A. D. 1853, in the district court for the county of Ramsey, against Castner & Hinkley,

were allowed on the 24th of Oct., 1853, to put in their joint and several answers, after a decree pro confesso had been entered against them. On the 28th of November, 1856, by stipulation, Emmett and Moss were made parties defendants, and upon the 9th day of December, 1856, filed their joint and several answers, and also served a cross-bill, to which exceptions were taken by the complainant in the original suit.

It appears that a judgment was rendered on the 8th day of May, 1852, against Charles Symonds and Daniel F. Brawley, in favor of John S. Castner and John S. Hinckley, for the sum of $\$121\frac{74}{100}$; that execution issued to the sheriff of Ramsey county on the judgment, in the usual form prescribed by statute; that the sheriff, on the second day of October, 1852, sold lots No. 14 and 15, block No. 33, in Rice & Irvine's addition to the town of St. Paul, and lot No. 2, of section 12, town. 28, R. 22, being the property of the complainant in this suit, for the sum of $150, and on the 13th of Nov. following made his return. It was admitted on the hearing that the sheriff, without leave of the court, amended his return subsequently, by including the N.W. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of section 12, town. 28, R. 22, among the property sold by him. An affidavit is on file among the papers, showing an attempt on the part of the sheriff, on the 21st of February, 1853, to procure the arrest of the court to the amendment; but there is no evidence that the court sanctioned the course adopted by the sheriff. Castner & Hinkley, the execution-creditors, purchased the property sold by the sheriff, and received a deed from him on the 6th day of December, 1853, after the time for redemption. They subsequently, on the day of the commencement of this suit in equity, sold and conveyed the premises to Messrs. Emmett & Moss. An application, by motion, was made to the dist. court on the 22d day of January, 1853, by the complainant, Symonds; which was denied, no opinion having been filed by the judge. A few days after this motion was denied, application was made by bill to the equity side of the court for relief. Two important questions present themselves in investigating this case—

1st. Did the sheriff levy on the property sold on the 2d day of November, 1852?

2d. If there was no levy, can Emmett & Moss, the assigns or purchasers from Castner & Hinckley, hold the property?

Several minor questions were presented upon the argument, which, from the view we take of the case, it will be unnecessary to decide.

The whole gist of the proceedings is involved in the construction to be given the statute proceeding for the levy on real property under an execution.

If the levy was actually made so as to affect the property the sale was legal, and the plaintiff, Symonds, has no equity resulting

his own laches. The time for redemption *had redemption* had expired, and a tender of the money to the sheriff was made one day too late. The law providing for the levy on property by execution was taken from the report of the New York commissioners, who framed a revised code for the laws to the legislature of that State in 1850.

The provisions defining what shall constitute a levy *was* a new one, entirely changing the common-law rule, and making it essential that certain well defined acts should be performed by the sheriff before a levy should be complete. The seizure is a distinct act, and no real property can be sold by the sheriff, although a judgment lien existed, until the requirements of the statute are fulfilled.

In most States, a levy on lands has been the subject of judicial construction; but our statutes expressly fixes the act or acts which constitute it. (Sec. 91, p. 363, R. S.) "All property liable to an attachment is liable to execution. It must be levied on in the same manner as similar property is attached. Until a levy, property is not affected by the execution."

The statute in regard to attachment on real property provides that "a copy of the warrant, certified by the sheriff, must be left with the occupant of the premises, or if there be no occupant, in a conspicuous place therein," (sec. 140, p. 346, R. S.;) and although this portion of the statute, when applied to executions, would seem to be merely declaratory to the sheriff, the last clause of sec. 91 clearly settles the question, "Until a levy, property is not affected by the execution."

It was contended by the defendants' counsel, that judgments having a lien upon real estate, there was no reason for making the sheriff perform any other act to complete a levy than advertising the property for sale. This position is fully sustained by the decisions in those States where the advertisement constitutes the levy, and no act is necessary to perfect it; but it will be found, upon examining the statutes of most of the States, that an old rule has been materially changed, and certain statutory provisions have been made substantive requirement before a levy is perfected. This change is certainly a good one, and relieves judgment creditors from great embarrassment.

In proceedings where attachments have been obtained as a provisional remedy, the statute provides that the judgment must be collected out of the property held by the warrant, and no formal levy by execution is necessary. If there should not be property enough to satisfy the judgment, the levy upon other property must be in accordance with sec. 140, p. 346, R. S.

The testimony of Sheriff Brott shows clearly that he failed to comply with the statute. He says: "In making the levy, I did not go upon the premises; I got in sight of it. I did not leave a

copy of the execution upon the premises, or with any one occupying the same, and did not demand payment," &c.

This testimony was objected to before the referee, I suppose, upon the ground that the return was conclusive. We do not think so. A sheriff's return is prima facie evidence of the facts stated therein, and his certificate would be so received. No particular form is prescribed for the return; but we think it would be within the spirit of the statute that he should be required to state the fact of a delivery of a copy, with day, hour, &c, to whom, and where, as the necessity of such a return would always remind him of the acts to be done on making service. The certificate should be a statement of facts, and not of any conclusions of law he might form as to what constituted a levy. When the case involves the rights of third parties, who have relied on the judicial records of the county, and have become purchasers in good faith, and without laches, public policy would seem to require that the return should be conclusive, leaving the party to his remedy against the officer; but in other cases we think the return can be disproved.

Again: the judgment lien, by our statute, runs against real property for 10 years; the lien then ceases. The time when a lien by actual levy on execution should attach becomes important often between creditors and otherwise. It would seem, therefore, to be a wise provision, making the ceremony of a levy a well defined and distinct act, capable of being clearly identified, in place of the uncertain acts and intentions formerly required to show a levy, which it is nearly, if not impossible, to controvert against the sheriff's official certificate.

The policy of denying judgment liens for a longer period than ten years, unless an action is commenced on a judgment obtained upon the original judgment, may be, perhaps, very questionable. But one thing is certain, that, in communities where numerous statutory liens against real property exist, the amount of money paid for searches far exceeds the money collected upon judgments. We have, therefore, arrived at the conclusion that no levy was made by the sheriff; and Castner & Hinkley derived no title to the property under the sale. The sale was not merely irregular; it was erroneous, and no protection is offered to the purchaser from Castner, for the sheriff acted without authority. Emmett was the attorney of Castner & Hinkley in the suit upon which the judgment was obtained against Brawley & Symonds; was conversant with all their difficulties; signed the execution issued to the sheriff, and is presumed to have instructed him in regard to the levy. Moss, at the time of the purchase from Castner & Hinkley of the property in controversy, was either the law partner of Emmett, or was with him in the same office, and, it appears from the testimony of Mr. Rice, knew that proceedings *was* being commenced against Symonds to recover the property sold by the sheriff. In fact, from

his own testimony, it appears that he examined the records in the clerk's office, the return of the sheriff, and all the papers connected with the case. He was informed, therefore, of the motion which was made by Symonds to set aside the sale, and the grounds upon which the motion was based. The affidavits are on file and form a part of the records of the case. He was not a purchaser without full knowledge of the facts. It very doubtful if he could hold the property, had he been a bona fide purchaser at the sheriff's sale.

The cases cited by the def'ts' counsel apply where, by judicial construction, notice of sale is held to be the only levy upon lands. They are totally inapplicable under our statute, which defines what constitutes a levy upon real property, and thas, "until a levy, property is not affected by the execution."

In those cases, an omission of the notice of sale is declared by statute not to affect a bona fide purchaser.

The notice of sale by our statute forms no part of the levy. The levy must be complete before the advertisement of sale is made; and an omission of the proceedings subsequent to the levy will not invalidate where the interests of a bona fide creditor are commenced.

Upon full examination, we are led to the conclusion that a decree must be entered in favor of the complainants, in accordance with the prayer in the bill.

R. R. NELSON,
Judge 2d Dist.

The foregoing endorsed as follows:
Symonds vs. Castner and others. Opinion of the Court. Filed Sept. 15, 1857. G. W. Prescott, Clerk.

District Court, 2d Judicial District, Ramsey County, Minnesota Territory.

CHARLES SYMONDS
against
JOHN M. CASTNER, JOHN S. HINKLEY, HENRY L. MOSS, & LAFAYETTE EMMETT. } In Chancery.

And now come the said defendants, and appeal to the Supreme Court from the final order and decree made and entered in said suit by R. R. Nelson, judge of said dist. court, sitting as a court of chancery; a copy of which is hereto attached.

JAMES SMITH, JR.
Sol. for Def'ts.

Dated Nov. 24, '57.
St. Paul, Nov. 24th, 1857.
Filed Dec. 2, 1857.

GEO. W. PRESCOTT,
Clerk.

Territory of Minnesota, District Court 2d District, County of Ramsey.

I, Geo. W. Prescott, clerk of the above named court, certify the foregoing to be a full and complete copy of the judgment-roll and notice of appeal in the cause therein entitled, as the same is on file in my office.

Witness my hand and the seal of said court, at St. Paul, this 11th day of January, A. D. 1858.

[L. S.] GEO. W. PRESCOTT,
Clerk.

Filed in Sup. Court, Jan. 11, 1858.
GEO. W. PRESCOTT,
Clerk.

In the Supreme Court of the Territory of Minnesota.

RAMSEY COUNTY, *ss.*

CHARLES SYMONDS, Respondent,
against
JOHN M. CASTNER, JOHN S. HINKLEY, HENRY L. MOSS, LAFAYETTE EMMETT, Appellants.

Appeal from the District Court of the 2d Dist., Minn. Terr'y, Ramsey County.

DEAR SIR: Take notice, that the appeal of the said appellants in this action from the district court of the 2d judicial district of the Territory of Minnesota, at Ramsey county, to the said supreme court, will be brought on for hearing and argument at the term or session of said Supreme Court, commencing on the 2d Monday of January, A. D. 1858.

Yours, respectfully,
HENRY J. HORN,
With RICE, HOLLINSHEAD & BECKER,
Atty's for Resp'ts.
JAMES SMITH, JR.,
Att'y for App'lts.

St Paul, Decem. 28, 1857.
Service of a copy of the within admitted, Dec. 28, '57.
JAMES SMITH, JR.,
Sol. for Def'ts.

CHARLES SYMONDS
vs.
JOHN M. CASTNER et al. } In Chancery.

The defendants in the action aforesaid come and object to the jurisdiction and authority of the Hon. William H. Welch and the Hon. R. R. Nelson, justices of the supreme court of the late Territory of Minnesota, to hear or determine the action aforesaid, as a

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supreme court, and respectfully submit the following grounds for said jurisdictional objection:

1st. That the court aforesaid has been, by virtue of the adoption and ratification of the constitution of the State of Minnesota, with the consent and by authority of an act of Congress, superseded by the authorities and courts of said State, and can only act as a United States district court.

2d. That by an act of the legislature of the State of Minnesota, approved January 11th, 1858, the time for holding the supreme court is postponed, and the laws of the Territory aforesaid, providing for holding a term of the supreme court on the 2d Monday of January of each year, repealed.

3d. That the action aforesaid is carried by appeal to the supreme court of the State of Minnesota, and not to the district court of the United States aforesaid.

4th. That the papers and pleadings in said case were not certified to or filed in this court, until the 11th of January, 1858; and that the same were not so filed at the instance or by the consent of defendants aforesaid.

5th. That due notice for the hearing of said action has not been given.

Wherefore the said defendants, without intending any disrespect to this court or any judge thereof, respectfully ask that this hon. court will refuse to take jurisdiction of said case, and that this their objection to such jurisdiction may be filed, so that their legal rights may not be prejudiced the premises.

JAMES SMITH, Jr.,
Sol. for Def'ts.

Filed Jan. 13. 1858.

GEO. W. PRESCOTT, *Clerk.*

In Supreme Court.

SYMONDS
vs.
CASTNER et al.

Points and Authorities of the Respondent.

First. The proceedings of the sheriff under the execution, by which he affected to make title, were irregular, and the sale void:

1. Because he did not resort to the personal property of the debtor first, although there was sufficient personal property in the possession of the debtor to satisfy the debt, of which the sheriff had notice.

2. Because he gave no notice of the execution, and made no demand of payment to and on the debtor or his agent on the premises.

3. Because there was no levy upon the property affected to be sold, and the execution never attached thereto.

4. Because no copy of the writ of execution was left upon the

premises, or with any one occupying them, or served in any manner.

5. Because the return of the sheriff to the execution is void and inconclusive: in that it was altered and interpolated without authority, after the same was filed; in that it shows no resort to the personal property of the debtor first, to satisfy the debt, nor no levy, nor no acts constituting a levy in law, nor a sale of the property described in the answers of the appellants and claimed by them; and is otherwise irregular and void.

6. Because the land was not sold in parcels.

Second. The sheriff's sale should be set aside upon equitable considerations:

1. Because the defendants, Castner and Hinkley, being plaintiffs in the execution, should not in equity under the circumstances ask more than the payment of their debt and costs, or to be reimbursed for their bid; which amount has been tendered and paid into court.

2. Because the respondent was absent at the time of the issuance of the execution, and returned but a few days before the sale, and was prevented from attending the same by sickness.

3. Because he was misled as to the time of redemption by the sheriff to whom he applied.

4. Because the price bid was greatly inadequate.

5. Because the respondent paid the amount required by the sheriff, to him on the day which he understood was in time.

6. Because of the extreme hardship of the case.

7. Because the appellants seeks an unconscionable advantage.

Third. That the defendants, Castner and Hinkley, being the plaintiffs in the execution, are affected in law by constructive notice of the irregularities of the plaintiff; and the defendants, Emmett and Moss, being their grantees, and having been the attorneys for the said plaintiffs in the said execution, are in like manner affected by such constructive notice.

Fourth. That all the defendants were notified and informed, in point of fact, of the irregularities of said proceedings, and of the rights and equities of the plaintiff, before taking any title or claiming any estate in the land.

Fifth. That Emmett and Moss, the defendants who claim title, are not bona fide purchasers for value.

Authorities.

Revised Statutes of Minnesota Territory, sec. 82, sub. 71, p. 362; sec. 93, ch. 71, p. 363; sec. 91, 363; ch. 70; sec. 140, p. 346, ch. 71; sec. 108, p. 366; Appendix, sec. 43, p. 12; Sheriff's, p. 66; sec. 111, 112, ch. 71, p. 366, ch. 82; sec. 14, p. 412, ch. 10; sec. 158, p. 319.

Sheriffs, p. 255 to 258, 211.

Dutton vs. Tracy, 4 Conn., 356.
Green vs. Burk, 23 Wend., 493.
vs. Ewing, 3 Howard, (S. C.,) 707.
McBurnie vs. Overstreet, 8 B. Monroe, R. 300.
on Sheriffs, 200.
Williams et als. vs. Reyton's Lessee, 4 Wheat., 77, 4 Cond. R., 395.
Stead's Ex'rs vs. Conse, 4 Cranch, 403.
2 Pet. Com. Reps., 151, and notes; 11 Wend., 22.
2 Humphrey's R., 455.
Davis vs. Maynard, 9 Mass., 242.
Lancaster vs. Pope, 1—86.
Williams vs. Amory, 14—20.
Wellington vs. Gale, 13—483.
Curtis vs. Norton, 1 Humph., 278.
Bowler vs. Bell, 20 Johns., 338.
Wayland vs. Yipton, 5 S. R., 232
Lothrop vs. Abbott, 4 Shep., 421.
Anderson vs. Carlisle, 7 How., (Miss.,) 408.
Norton vs. Walker, 554.
Barbour's Crim. Pr., 619—74, 627; 539, 540.
Davis vs. Maynard, 9 Mass., 247 and 246.
Eddy vs. Knapp, 2 Mass., 154.
Lancaster vs. Pope, 1 Mass., 86.
Means vs. Osgood, 7 Green, 146.
Libby vs. Copp, 3 N. Hamp., 45.
Williams vs. Amory, 14 Mass., 20.
Anderson vs. Cunningham, 48.
Pound vs. Pullen, 3 Jer'y, 338.
Buckholden vs. Keller, 2 Ban., 51.
Elliot vs. Doughty, 7 Black, 199.
Sleeper vs. Newburg Seminary, 19 Vt., 451.
Morton vs. Edwin, 19 Vt., 77.
Pierse vs. Strickland, 26 Maine, 227.
Harrison vs.
Simons vs. Catlin, 2 Caines, 61.
Goodyer vs.
Parsons vs. Loyd, 3 Wils., 341.
Read vs. Martel, 3 Johns., 525.
Lawrence vs. Speed, 2 Bibb, 401.
Hayden vs. Dunlap, 3 Bibb, 216.
Lessee of Allen vs. Paush, 3 Ohio, 187.
Lessee of Hall & McAllister, 9 Ohio, 19.
Jackson ex. dem. Saunders et al. vs. Caldwell, 1. Con., 602, 641; 1 Barr. Prac., 301, 302.

Smith vs. Pope, 5 B. Monroe, 337.
Waite vs. Doley, 8 Humph. Rep., 406.
Barbour's M. Pr., 539, 541.
Anderson vs. Youlke, 2 Harris and Gill's, 346.
Am. Ins. Co. vs. Oakley, 9 Paige, 229.
Greele vs. Emery, in chancery, New York, cited in last authority.
Nullspaugh vs. McBride, 7 Paige, 509.
Tripp vs. Vincent, 8 Paige, 176.
Snyder vs. White, 6 How., 321, P. R.
Regrea vs. Rea, 2 Paige, 339.
Barbour's Cr. P. R., 589.
1 Story's Equity Jurisprudence, p. 422, sec. 395.

HENRY J. HORN,
With M. SHERBURNE & RICE,
HOLLINSHEAD & BECKER,
Attorneys of Respondent.

Filed Jan. 13, 1858.

GEO. W. PRESCOTT, *Clerk.*

Supreme Court, Minnesota, at January General Term, 1858.

CHARLES SYMONDS, Respondent,
against
JOHN M. CASTNER and JOHN S. HINKLEY, and Henry L. Moss and Lafayette Emmett, Appellants.

Pursuant to the decretal order of this court, duly made in this action, upon the appeal from the judgment and decree herein, in the district court of Ramsey county, in all things affirming said judgment and decree, and directing the entry thereof as the judgment and decree of this court, with costs, in this court and in court below, to respondent; now, on motion of H. J. Horn, one of the attorneys for respondent, it is hereby by this court adjudged and decreed that the sale made by George F. Brott, as the sheriff of the county of Ramsey, in said Territory, on the second day of October, in the year eighteen hundred and fifty-two, of the premises described in the bill of complaint in this action, to wit: lots numbered fourteen and fifteen, of block numbered thirty-three, in Rice and Irvine's addition to the town of Saint Paul, (now city,) in said county of Ramsey; and lot numbered two, and the northwest quarter of the northeast quarter of section numbered twelve, in township numbered twenty-eight north, of range numbered twenty-three west, according to the United States government survey, all lying and being in said Ramsey county, as under a certain execution issued out of the court below, upon a judgment entered therein, to wit, in said district court for said county of Ramsey,

on the 8th day of May, in the year eighteen hundred and fifty-two, in favor of John M. Castner and John S. Hinkley, and against Daniel F. Brawley and Charles Symonds, (which said Charles Symonds is the respondent in this action,) be, and the said sale is, in all things annulled and set aside, and that the deed executed by the said George F. Brott, as sheriff aforesaid, to the said John M. Castner and John S. Hinkley, for said premises, bearing date the sixth day of December, in the year eighteen hundred and fifty-two, be and the same is annulled, set aside, and declared of no effect; and that the said deed, and also a certain deed executed by said John M. Castner and John S. Hinkley, to Henry L. Moss and Lafayette Emmett, dated the twenty-sixth day of January, eighteen hundred and fifty-three, of said lots numbered fourteen and fifteen, and also a certain deed executed by said John M. Castner and John S. Hinkley, to the said Lafayette Emmett, dated the twenty-sixth day of January, eighteen hundred and fifty-three, for the remainder of said property, referred to and described in the answers of said defendants in this action, be delivered up to this court to be cancelled, and the same are ordered to be cancelled; and that the title of the aforesaid premises be and the same is forever freed and cleared from said sale, said deed executed by said George F. Brott, as aforesaid, said deeds executed by said Castner and Hinkley, and from all or incumbrance by reason thereof; and in default of said deeds being delivered up to this court for cancellation, as aforesaid, that this decree shall stand and be recorded, and operate with the same effect as if the said deeds had been so delivered up and cancelled.

And it is further adjudged that the amount of one hundred and fifty-three dollars and thirty-five cents, money paid into the court below, shall be deemed a repayment of the bid or purchase money and interest for which the said premises were sold to the said Castner & Hinkley; and that the said John M. Castner and John S. Hinkley, or their assigns, have leave to take the said money out of the said district court, after deducting therefrom the costs and reasonable charges of the plaintiff, respondent in this action in the court below, and in this court to be taxed by the clerk.

By the court.

Attest: GEO. W. PRESCOTT, *Clerk.*

Dated January 14, 1858.

I hereby tax the costs in this action against appellants at the sum of one hundred and forty-four $\frac{50}{100}$ dollars, as appears by the following items, viz:

In Court below.

Disbursements:	
Sheriff's fees	5 50
Clerk's fees	14 00
Referee's fees	27 00
	46 50

In Supreme Court.

Statute costs:	
Before argument	20 00
For argument	30 00
Disbursements:	
For record	40 00
Clerk's fees	8 00
	$144 50

March 13, 1858.

GEO. W. PRESCOTT, *Clerk.*

Filed Mar. 13, 1858.

G. W. PRESCOTT, *Clerk.*

TERRITORY OF MINNESOTA,
The District Court for the
first district, Ramsey county, ss.

DAVID KINGHORN
against
CHARLES SYMONDS, John M. Castner, and John S. Hinkley. } In Chancery.

To the Honorable the judge of the District Court for the first judicial district and county of Ramsey:

In pursuance of an order of this honorable court, made in this cause on the day of , A. D. 1853, refering the same to the undersigned, to take the proof therein and report the same to this court with all convenient speed, I do report, that on the twenty-fourth and thirtieth days of November, A. D. 1853, being attended as well by the solicitors for the complainant as by the solicitors for the defendants, I proceeded, and in their presence, and took upon verbal interrogatories the depositions of Edmund Rice, Charles Symonds, and George F. Brott, witnesses on the part of the complainant, as part of the proofs in this action.

And I do further report, that on the fourth and tenth days of January, A. D. 1854, being attended by the solicitors aforesaid, I proceeded and in their presence took upon verbal interrogatories

the depositions of John M. Castner, Henry L. Moss, Charles N. Daniels, and J. R. Brewster, witnesses on the part of the defendants, John M. Castner and John S. Hinkley, as part of the proofs in this cause.

And I do further report, that a promissory note for $550, made by C. Symonds to David Kinghorn, dated May 29th, 1852, and marked Exhibit "D," a mortgage deed to secure the payment of said note, marked Exhibit "C," the original notice of taxation of costs in the action of Castner & Hinkley against Brawley & Symonds, marked Exhibit "A," a certified copy of taxation of costs in said last mentioned suit, marked Exhibit "B," a copy of subpœna in chancery, issued in the cause wherein Charles Symonds is complainant and John M. Castner and John S. Hinkley are defendants, marked Exhibit "F," and a copy of a writ of injunction issued in the said last mentioned suit, marked Exhibit "E," now offered in evidence by the solicitors for the complainant.

And I do further report, that a deed from the sheriff of the county of Ramsey to John M. Castner and John S. Hinkley, marked Exhibit "H," and a deed from John M. Castner and John S. Hinkley to Henry L. Moss and Lafayette Emmett, marked Exhibit "G," were offered in evidence by the solicitors for the defendants, John M. Castner and John S. Hinkley; all of which depositions and exhibits are herewith returned.

And I do further certify and report, that the costs were inserted in the entry of judgment in the action of Castner & Hinkley against Brawley & Symonds, on the 17th day of July, A. D. 1852, after the same had been taxed by the clerk. All of which is respectfully submitted.

JAMES K. HUMPHREY,
Special Master to take proofs in
Kinghorn vs. Symonds and others.

February 7th, 1854.

The deposition of Edmund Rice, a witness produced, sworn, and examined on the part of the complainant, in the action wherein David Kinghorn is complainant, and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, before me, James K. Humphrey, special master in chancery, to take the proofs in said cause, at my office, in the town of Saint Paul, county of Ramsey, and Territory of Minnesota, on the twenty-fourth day of November, in the year 1853.

Edmund Rice, being first by me duly sworn, testified as follows:

I was and am one of the attorneys of record in the case of John M. Castner and John S. Hinkley against Daniel F. Brawley and Charles Symonds. On the 15th day of July, A. D. 1852, I received a notice of taxation of costs in that action from Lafayette Emmett, one of the attorneys for the plaintiffs, which is marked

"Exhibit A," and offered in evidence. Certified copy of taxation of costs in the action of Castner & Hinkley against Brawley and Symonds, marked "Exhibit B," is in the handwriting of Sherwood Hough, who is deputy clerk of the district court. On the 26th day of January, A. D. 1853, I offered to pay one hundred fifty-three dollars and thirty-five cents to John M. Castner and John S. Hinkley, in gold and silver coin of the United States, as attorney for Charles Symonds and Daniel F. Brawley, to satisfy their judgment against Brawley & Symonds, for damages and costs and interest. This money was offered to them in the office of Emmett & Moss, in this town. I laid the money on the table; they were both present, sitting together in the office, and they both said they would not receive it. Henry L. Moss was present at the time. Immediately previous to that, Mr. Symonds and myself went to the office of register of deeds of Ramsey county, and I examined the records with Pinker, the dept. reg., to ascertain if there had been any conveyance by Castner & Hinkley lodged or recorded in the real property mentioned in the bill of complaint in this action; we could find no deed or conveyance thereof, or minutes of any conveyance; and the dept. reg. informed me that there had been none left there that day, or at any time previous. After the tender of the money to Castner & Hinkley, Castner told me that they had disposed of the property. I then went back to the register's office to make another examination, and found Wilkinson, the register, there, and he told me that there had been no conveyance of the property left in the office; that there was no notice of any on the minutes, and none had been left there. Mr. Wilkinson, the reg. of deeds, made an examination of the records in the office, and could find no deed of conveyance from Castner & Hinkley to any one, of the property, and he said none had been left with him. I immediately came up and deposited the money with J. K. Humphrey, cl'k of the dist. court, for the benefit of Castner & Hinkley. On the 25th day of January I saw Mr. Castner in the office of Messrs. Emmett & Moss, and told him that Symonds had made an application upon bill of complaint to Henry Z. Hayner, who was then judge of the district court of Ramsey county, for an injunction to restrain him and Hinkley from selling the land; Mr. Emmett was present, and said he thought it was a little too late. Castner said they had agreed to give Symonds until the following Saturday at 12 o'clock to accept of their proposition to redeem the land; they had agreed not to sell it until then; but if he was going to commence proceedings they should let the land slide, or sell it. I told him the bill was in the hands of Henry Z. Hayner, and that the injunction would probably be allowed. My object was to notify them of the application for an injunction; and I think I went down to their house once to see them for that purpose, but did not find them. I know that in

July, A. D. 1852, and from that time until the close of the season, and of course during the month of August, 1852, Symonds had two or three, three or four, hundred tons of ice in his ice-house, here in Saint Paul, and he kept a man and team for the purpose of retailing the same daily. I was not a judge of the value of ice, but I suppose it was worth four or five hundred dollars to any one to retail out. I know that Mr. Symonds had about one hundred cords of wood—four-foot wood—piled up on a lot adjoining his residence, the property described in the bill of complaint in this action. There might have been two hundred cords of the wood; I should think there might have been one hundred cords of the wood at least. During the month of August Symonds was absent—I think during the whole month; but the premises were occupied, and he had a man acting as his agent, receiving money and selling ice. I think his name was Oiley; I was acquainted with him, and knew he was attending to Symonds' business. I have been familiar with the business affairs of Mr. Symonds since the fall of 1850, having acted as his attorney and agent in the transaction of a great deal of it. The wood which I speak of was dry wood, and such wood has usually been worth two dollars a cord. At the time Castner told me that they had disposed of the land, Mr. Moss was present, but said nothing.

EDMUND RICE.

Sworn to and subscribed before me, this 24th day of November, 1853.

JAMES K. HUMPHREY,
Special Master in Chancery.

TERRITORY OF MINNESOTA,
Ramsey County, ss.

I, James K. Humphrey, special master in chancery in the cause wherein David Kinghorn is complainant, and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, to take the proofs, do hereby certify that the above deposition was taken by me, at my office, in the town of Saint Paul and county of Ramsey, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-three, between the hours of nine o'clock a. m. and eleven o'clock a. m. of said day; that it was taken at the request and on the part of the complainant upon verbal interrogatories; that it was reduced to writing by myself; that said deponent, before examination, was sworn by me to testify the truth, the whole truth, and nothing but the truth, relative to the said cause; and that after the said deposition was reduced to writing by me, as aforesaid, it was carefully read to the said deponent; and that thereupon the same was sworn to and subscribed by the said deponent.

Dated at Saint Paul, this 24th day of November, in the year of our Lord one thousand eight hundred and fifty-three.

JAMES K. HUMPHREY,
Special Master to take the proofs in
Kinghorn vs. *Symonds et al.*

Deposition of Charles Symonds, a witness produced, sworn, and examined on the part of the complainant, in the action wherein David Kinghorn is complainant, and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, before me, James K. Humphrey, special master in chancery to take the proofs in said cause, at my office, in the town of Saint Paul, county of Ramsey, and Territory of Minnesota, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-three.

Charles Symonds, being first by me duly sworn, testified as follows:

I am one of the defendants in the case of John M. Castner and John S. Hinkley against Daniel F. Brawley and Charles Symonds. On the second day of December, A. D. 1852, at four o'clock and twenty minutes in the afternoon, I paid the sheriff of Ramsey county the full amount of the execution in that case—I think one hundred and thirty-seven dollars—it might have been more or less; do not remember distinctly. During the month of August, 1852, I had several hundred tons of ice in my ice-house, in Saint Paul, not exempt from execution, which was worth five hundred dollars; during the same time there were brick machines worth four hundred dollars belonging to Brawley & Symonds, in the town of St. Paul; also, over one hundred and thirty-five cords of wood, adjoining the premises described in the bill of complaint, which was worth three hundred dollars. The payment which I made to the sheriff, of which I have spoken, was one hundred and forty-six dollars and sixty-eight cents. I was the owner of the lot that the wood was on. The brick machines were laying open in the barn on my premises. I left St. Paul on the 14th day of July, 1852, and returned on the sixth day of September following. Somewhere about the 18th day of September, in Mr. Masterson's office, I first learned of the judgment and execution in the action of Castner & Hinkley against Brawley & Symonds. Mr. Masterson or Mr. Simons, at that time, was talking about sales of real estate; I said, thank God, you can't sell anything belonging to me. Sheriff Brott, who was present, said I was mistaken; that my house where I lived, and some land up there—I have not seen it—are levied upon, and will be sold shortly. I asked him when, and he said the second day of October. I asked him, then, why he did not take that wood or the brick machines which belonged to the firm. When I asked him why he did not take that wood, we

had left Mr. Masterson's office, and were coming along up, and I pointed to the wood, and asked him why he did not take it; that it was mine, on my lot, and sufficient to satisfy the demand three or four times over. He said he did not know the wood was mine; that he did as he was ordered. When I was absent, the premises was occupied by Bill Ooley, Austin Ooley, and a man of the name of Brown. My business, while I was absent, was left with Austin Ooley; he attended to my business generally; I ordered him to pay all debts which were against me. When I went away he had from fifty to seventy-five dollars of my money, and was selling ice every day and receiving the money; the wood spoken of belonged to me individually.

My residence is on the premises mentioned in the bill of complaint in this action, and I have occupied the premises since the eighth day of July, 1852.

C. SYMONDS.

Sworn to and subscribed before me, this 24th day of Nov., 1853.

JAMES K. HUMPHREY,
Special Master in Ch'ry.

Cross-ex.

Did you at any time before this levy tell the sheriff, or any one, that you had no personal property upon which he could levy an execution, or words to that effect?

Answer. No.

Did you ever tell the sheriff or any person else that that wood did not belong to you?

Answer. Not until after the second day of October, which was after the sale.

Were not those machines of which you speak under lock and key at the time the levy was made?

Answer. No; they were in the barn; the barn was locked nights to keep folks from taking things in the night.

Do you know whether the ice was under lock and key when the levy was made?

Ans. I do not; the ice-house is opened daily.

Previous to the levy, had you turned over this wood to any person to be disposed of?

Ans. No, sir; with the exception of my agent, who was authorized to sell it.

Did you give your agent instructions to pay any other debts than such as were necessary to carry on the business?

Ans. Yes; my orders were to pay all debts; I understood there were none. I believe he would have paid the debt to Castner & Hinkley had it been presented.

Before I got back, about the twenty-second or twenty-third day

Dated at Saint Paul, this 24th day of November, in the year of our Lord one thousand eight hundred and fifty-three.

JAMES K. HUMPHREY,
Special Master to take the proofs in
Kinghorn vs. *Symonds et al.*

Deposition of Charles Symonds, a witness produced, sworn, and examined on the part of the complainant, in the action wherein David Kinghorn is complainant, and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, before me, James K. Humphrey, special master in chancery to take the proofs in said cause, at my office, in the town of Saint Paul, county of Ramsey, and Territory of Minnesota, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-three.

Charles Symonds, being first by me duly sworn, testified as follows:

I am one of the defendants in the case of John M. Castner and John S. Hinkley against Daniel F. Brawley and Charles Symonds. On the second day of December, A. D. 1852, at four o'clock and twenty minutes in the afternoon, I paid the sheriff of Ramsey county the full amount of the execution in that case—I think one hundred and thirty-seven dollars—it might have been more or less; do not remember distinctly. During the month of August, 1852, I had several hundred tons of ice in my ice-house, in Saint Paul, not exempt from execution, which was worth five hundred dollars; during the same time there were brick machines worth four hundred dollars belonging to Brawley & Symonds, in the town of St. Paul; also, over one hundred and thirty-five cords of wood, adjoining the premises described in the bill of complaint, which was worth three hundred dollars. The payment which I made to the sheriff, of which I have spoken, was one hundred and forty-six dollars and sixty-eight cents. I was the owner of the lot that the wood was on. The brick machines were laying open in the barn on my premises. I left St. Paul on the 14th day of July, 1852, and returned on the sixth day of September following. Somewhere about the 18th day of September, in Mr. Masterson's office, I first learned of the judgment and execution in the action of Castner & Hinkley against Brawley & Symonds. Mr. Masterson or Mr. Simons, at that time, was talking about sales of real estate; I said, thank God, you can't sell anything belonging to me. Sheriff Brott, who was present, said I was mistaken; that my house where I lived, and some land up there—I have not seen it—are levied upon, and will be sold shortly. I asked him when, and he said the second day of October. I asked him, then, why he did not take that wood or the brick machines which belonged to the firm. When I asked him why he did not take that wood, we

had left Mr. Masterson's office, and were coming along up, and I pointed to the wood, and asked him why he did not take it; that it was mine, on my lot, and sufficient to satisfy the demand three or four times over. He said he did not know the wood was mine; that he did as he was ordered. When I was absent, the premises was occupied by Bill Ooley, Austin Ooley, and a man of the name of Brown. My business, while I was absent, was left with Austin Ooley; he attended to my business generally; I ordered him to pay all debts which were against me. When I went away he had from fifty to seventy-five dollars of my money, and was selling ice every day and receiving the money; the wood spoken of belonged to me individually.

My residence is on the premises mentioned in the bill of complaint in this action, and I have occupied the premises since the eighth day of July, 1852.

C. SYMONDS.

Sworn to and subscribed before me, this 24th day of Nov., 1853.

JAMES K. HUMPHREY,
Special Master in Ch'ry.

Cross-ex.

Did you at any time before this levy tell the sheriff, or any one, that you had no personal property upon which he could levy an execution, or words to that effect?

Answer. No.

Did you ever tell the sheriff or any person else that that wood did not belong to you?

Answer. Not until after the second day of October, which was after the sale.

Were not those machines of which you speak under lock and key at the time the levy was made?

Answer. No; they were in the barn; the barn was locked nights to keep folks from taking things in the night.

Do you know whether the ice was under lock and key when the levy was made?

Ans. I do not; the ice-house is opened daily.

Previous to the levy, had you turned over this wood to any person to be disposed of?

Ans. No, sir; with the exception of my agent, who was authorized to sell it.

Did you give your agent instructions to pay any other debts than such as were necessary to carry on the business?

Ans. Yes; my orders were to pay all debts; I understood there were none. I believe he would have paid the debt to Castner & Hinkley had it been presented.

Before I got back, about the twenty-second or twenty-third day

wherein David Kinghorn is complainant, and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, to take the proofs, do hereby certify that the above deposition was taken by me, at my office, in the town of St. Paul and county of Ramsey, on the thirtieth day of November, one thousand eight hundred and fifty-three, between the hours of eleven o'clock in the forenoon and one o'clock in the afternoon of said day; that it was taken at the request and on the part of the complainant upon verbal interrogatories; that it was reduced to writing by myself; that said deponent, before examination, was sworn by me to testify the truth, the whole truth, and nothing but the truth, relative to the said cause; and that after the said deposition was reduced to writing by me as aforesaid, it was carefully read over to the said witness, and that thereupon the same was sworn to and subscribed by the said witness.

JAMES K. HUMPHREY,
Special Master.

Dated at St. Paul, this 30th day of November, A. D. 1853.

Dist. Court, 1st District.

CASTNER & HINKLEY
vs.
BRAWLEY & SYMONDS.

Judg't upon an acceptance of a tender of judgment for $100 95, at May term, 1852.

Take notice, that on the 17th instant, at 10 o'clock a. m., the pl'ff will apply to the clerk of said court to have inserted in the entry of judgment in said case the sum of the allowance for costs, as provided by statute, the fees of officers allowed by *land*, and the fees of witness in this case.

L. EMMETT,
Att'y for Pl'ffs.

July 15th, 1852.

Messrs. RICE, HOLLINSHEAD & BECKER,
Defts. Att'ys.

Costs, &c.

For proceedings before notice of trial.....	$7 00
Subsequent.....	7 00
Sheriff's fees.....	
Clerk's...do.....	
Witness .do.....	

The foregoing endorsed as follows: "Castner & Hinkley vs. Brawley & Symonds."

4910

"Exhibit C."

This indenture, made this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-two, between Charles Symonds, of the county of Ramsey, and Territory of Minnesota, of the first part, and David Kinghorn of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of six hundred dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns forever, all the following described piece or parcel of land, situate, lying, and being in the county of Ramsey, and known and designated as follows, viz: Lots numbered fourteen (14) and fifteen (15), in block number thirty-three (33), in Rice & Irvine's addition to the town of St. Paul, being the same deeded to the s'd Symonds by H. M. Rice and wife, by deed bearing date the 14th day of September, A. D. one thousand eight hundred and fifty: to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, in and to the above described premises, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part, for himself, his heirs, executors and administrators, doth covenant and agree to and with the said party of the second part, his heirs and assigns, that he is well seized in fee of the aforesaid premises, and hath good right to sell and convey the same in manner and form as above written, and that the same are free from all incumbrances whatever; and that the aforesaid premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming or to claim the whole or any part thereof, he will forever warrant and defend: Provided, always, that these presents are upon this express condition, that if the said Charles Symonds, his heirs, executors or administrators, shall well and truly pay or cause to be paid to the said David Kinghorn, his heirs, executors, administrators or assigns, the sum of five hundred and fifty dollars, in manner following, to wit, the sum of five hundred and fifty dollars four months after date, with interest after due at the rate of two and one-half per cent. per month, according to the conditions of a note bearing even date herewith, executed by the said Charles Symonds to the said David Kinghorn then and thenceforth these presents, and everything herein contained, shall cease and be void; otherwise, in full force and virtue.

In testimony whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

C. SYMONDS. [SEAL.]
[SEAL.]

Sealed and delivered in the presence of—
L. A. BABCOCK,
C. W. BABCOCK.

TERRITORY OF MINNESOTA,
County of Ramsey, ss.

Be it known, that on the twenty-ninth day of May, A. D. 1852, before the undersigned, personally came Charles Symonds, the grantor to the foregoing and within deed from him as such grantor to David Kinghorn, to me personally known to be the identical person described in and who executed the said deed; and he acknowledged that he executed the said deed freely and

OFFICE OF REGISTER OF DEEDS,
County of Ramsey, M. T.

I hereby certify that the within deed was filed in this office on the 29th day of May, A. D. 1852, at 3 o'clock and 30 minutes p. m., and was duly recorded in book "B" of mortgages, pages 75 and 76.

M. S. MEKINSON,
Register.
Per C. W. BABCOCK,
Deputy.

"Notice of taxation of costs."
"Exhibit A."

"L. EMMETT, *Plff's Att'y.*

$550.

Four months after date I promise to pay to David Kinghorn, or order, five hundred and fifty dollars, and interest after due at two and one-half per cent. per month, value received.

St. Paul, May 29, 1852.

C. SYMONDS.

(The foregoing endorsed, "Exhibit D.")

TERRITORY OF MINNESOTA,
The District Court for the 1st District,
Ramsey County.

To John M. Castner and John S. Hinkley, and to their attorneys, solicitors, counsellors and agents, or any of them, greeting:

Whereas Charles Symonds has filed his certain bill in chancery, in the district court within and for the county of Ramsey, and

Territory of Minnesota, against you, to be relieved touching the matters therein complained of, and which bill is still pending, we, therefore, in consideration of the premises, and of the particular matters in said bill set forth, do, in the name of the United States, strictly enjoin and command you, the said John M. Castner and John S. Hinkley, and all and every the persons before mentioned, and each and every of you, under the penalty of the law therein ensuing, that you and every of you, *under the penalty of the law therein ensuing, that you and every of you*, do from henceforth altogether absolutely desist and refrain from selling, conveying or incumbering all or any part of the following described property, to wit: The northwest quarter of the northeast quarter of section number twelve, in township number twenty-eight north, of range number twenty-two west, situate in the county of Ramsey aforesaid; also lots of land numbered fourteen and fifteen, in block number thirty-three, in Rice & Irvine's addition to the town of Saint Paul; and also lot number two, of section twelve, in township numbered twenty-eight north, of range numbered twenty-two west—all lying and being situate in the county of Ramsey aforesaid—until the order of our said court of chancery to the contrary.

Witness the Hon. Henry Z. Hayner, judge of the district court for the first judicial district and county of Ramsey aforesaid, at Saint Paul, in said county, this 26th day of January, A. D. 1853.

[SEAL.]

JAMES K. HUMPHERY,
Clerk.
By SHERWOOD HOUGH,
Dep'ty Cl'k.

(The foregoing endorsed as follows:)

Territory of Minnesota, the district court for the 1st dist., Ramsey county. Charles Symonds against John M. Castner and John S. Hinkley. Writ of injunction. Exhibit E.

TERRITORY OF MINNESOTA,
1st District, Ramsey County.

To John M. Castner and John S. Hinkley, Defendants.

You are hereby commanded in the name of the United States to appear before the district court of the county of Ramsey, in the first judicial district of the Territory of Minnesota, at Saint Paul, in said county, on or before the twenty-third day of February, in the year 1853, to answer a bill of complaint in chancery, exhibited against you by Charles Symonds, complainant, and on file in the office of the clerk of the district court for said county, and to do

further what the said court may order or direct; and this you are not to omit under the penalty which may be imposed by law.

Witness the Honorable Henry Z. Hayner, judge of said court, at Saint Paul, in said county, this 26th day of January, A. D. 1853.

JAMES K. HUMPHREY,
Clerk.

(The foregoing endorsed as follows:)

"The district court for Ramsey County. Charles Symonds against John M. Castner and John S. Hinkley. Subpœna in chancery. Exhibit F."

The deposition of John M. Castner, a witness produced, sworn, and examined on the part of the defendants, in the action wherein David Kinghorn is complainant, and Charles Symonds, John M. Castner and John S. Hinkley are defendants, before me, James K. Humphrey, special master in chancery, to take the proofs in said cause, at my office, in the town of St. Paul, county of Ramsey, and Territory of Minnesota, on the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-four.

John M. Castner, being first by me duly sworn, testified as follows:

I am one of the defendants in this action, and have heard Mr. Symonds' testimony in this cause. I know something about the wood testified to by Mr. Symonds; he told me had no wood there; that another man had some wood there—he was not directing his conversation to me; I heard him make the statement in Moss & Emmett's office. I was back and forth, near the lots described in the bill, sometime in the spring and summer of the year 1852, frequently, and saw no wood on those lots that I remember; saw some, think, on the lot back or nearly west of the lots described in the bill of complaint. Mr. Symonds came to me between the 8th and 12th days of September, 1852, and from his conversation I knew he had a knowledge of the judgment having been rendered against him. We talked about the judgment; he wanted to settle it on account of the feelings of his family; he said did not want to have his wife see the notices in the papers; he spoke of the sheriff's notice of levy and sale, which was in the papers at the time. I had no knowledge of any one being agent for Mr. Symonds, or authorized by him to pay his debts; if I had had such knowledge I should not have taken such a course to get my money. I inquired of a young man who was hauling around ice: asked him who those horses belonged to; his answer was, that they did not belong to Mr. Symonds. I think the date of the tender, as stated by Mr. Rice, is correct; but I think I told Mr. Rice that we had sold the

property, and that Mr. Symonds did not owe me anything; we sold the property between nine and ten o'clock in the forenoon, and the tender was made between twelve and one o'clock of the same day.

About the time that Mr. Rice made the tender I had a conversation with him, in which he stated to me that he did not want me to dispose of the land or sell it; then he stated that Mr. Symonds had been to him and wanted him to get out a writ of injunction. I said that there was an agreement between Mr. Symonds and us, that we should not sell the land until the next morning at nine o'clock, if he would raise the amount of money agreed upon by that time; we were to meet at Mr. Willis' office the next morning at nine o'clock; Mr. Symonds did not come.

I further stated to him that it seemed to me that he wanted to keep me out of the money; that if he was going to act the dog that way, I should let the land slide.

I did not sell until the next morning—until after the time had expired which we had agreed to give Mr. Symonds.

Cross-ex.

I should think I heard Mr. Symonds make the statement, that he had no wood, about the last of April or the first of May, 1852.

I do not know whether it was before or after judgment was rendered; there was a conversation about buying some wood; think Mr. Moss wanted to buy some wood, and asked him if he had any to sell; he stated that he had the agency of some wood—that he could sell it; I think Mr. Moss was talking about the wood down by his lots.

J. M. CASTNER.

Sworn to and subscribed before me, July 4, 1854.

JAMES K. HUMPHREY,
Master in Chancery.

TERRITORY OF MINNESOTA,
Ramsey County, ss.

I, James K. Humphrey, special master in chancery to take the proofs in the cause wherein David Kingborn is complainant and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, do hereby certify that the above deposition was taken by me at my office, in the town of Saint Paul and county of Ramsey aforesaid, on the fourth day of January, in the year eighteen hundred and fifty-four; that it was taken at the request and on the part of the defendants, John M. Castner and John S. Hinkley, upon verbal interrogatories; that it was reduced to writing by myself; that said deponent, before examination, was by me sworn to testify the truth, the whole truth, and nothing but the truth,

relative to the said cause; and that after the said deposition was reduced to writing by me as aforesaid, it was carefully read to the said deponent, and that thereupon the same was sworn to and subscribed by him.

Dated January 4th, 1854.

JAMES K. HUMPHREY,
Special Master in Chancery, to take proofs in Kingborn vs. Symonds and others.

The deposition of Henry L. Moss, a witness produced, sworn, and examined on the part of the defendants in the action wherein Dvaid Kingborn is complainant and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, before me, James K. Humphrey, special master in chancery to take the proofs in said cause at my office, in the city of Saint Paul, county of Ramsey and Territory of Minnesota, on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-four.

Henry L. Moss, being first by me duly sworn, testified as follows: I know all the parties to this suit, except Mr. Kingborn; I know the property where Mr. Symonds lives; the other property, which was sold on execution against Messrs. Brawley & Symonds, I am not much acquainted with—may have passed over it.

On the 26th day of January, 1853, I purchased for Mr. Emmett and myself, from Mr. Castner and Mr. Hinkley, lots No. fourteen and fifteen, in block No. thirty-three, of Rice & Irvine's addition to Saint Paul.

The deed for the property was executed and delivered early in the fore part of the day, and previous to a tender of money by Mr. Rice on behalf of Mr. Simonds to Mr. Castner, in the office of Emmett & Moss. The deed is marked "Exhibit G," and offered in evidence.

At the time of the purchase by me I had no knowledge whatever that Mr. Symonds had commenced any suit against Castner & Hinkley, or that he intended to do so. I mean, any suit in chancery to restrain the disposal of the property by Mr. Castner & Hinkley of the property described in the deed.

In the month of September or October, in the year 1852, I purchased nine cords of wood of Mr. Symonds; he told me the wood was not his, that he had disposed of it; I asked him to whom he had sold it, and he refused to tell me, but said he had the power to sell it and receive the pay for it. Subsequently, when he called on me for payment, I wished him to trust me longer, but he did not want to; said one reason was that he was afraid some of his creditors would garnishee me for the amount, and trouble him. He also made a statement in substance as follows—I cannot remember his exact words—that they could not ultimately prevent him from recovering the money, but that they might trouble him.

Cross-ex.

Int. 1. Do you know how Mr. Castner and Mr. Hinkley obtained a title to the land you purchased?

Ans. I do; they purchased it at sheriff's sale; think I have seen the deed from the sheriff to them; I am not positive of having seen the deed at the time of the purchase; however, I knew that their title was obtained by sheriff's sale, and refused to take any other conveyance from them but a warranty deed. I knew, at the time I purchased, that their title was derived through a sale of the *sale of the* same under an execution issued in an action, wherein Castner & Hinkley were plaintiffs and Brawley & Symonds were defendants. I think the deed was signed in the office of Emmett & Moss. I was a law-partner of Mr. Emmett at that time. Part of the deed is in Mr. Emmett's handwriting and part of it in my handwriting. I think I examined the wood back of Mr. Symonds' house before I purchased it; I knew, at the time I purchased the property, that Mr. Symonds was living in the house upon it; do not know how long he had occupied it. I knew from rumor that Mr. Symonds occupied the house in September.

Re-ex.

The day before, or two days before, I purchased the property of Mr. Castner & Mr. Hinkley, Mr. Symonds was in my office, and I knew, from a conversation which I then had with Mr. Castner, that they were, or had been, endeavoring to settle their matters in reference to a re-conveyance of the property by Messrs. Castner & Hinkley to him. Castner charged him with wanting further time, simply to commence legal proceedings to recover the land. Simonds denied it, and said he did not intend to commence any, and if his attorneys were about commencing any, it was without his authority or knowledge.

H. L. MOSS.

Sworn to and subscribed before me, this 10th day of January, 1854.

JAMES K. HUMPHREY,
Special Master.

TERRITORY OF MINNESOTA,
Ramsey County, ss.

I, James K. Humphrey, special master in chancery to take the proofs in the cause wherein David Kinghorn, as complainant, and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, do hereby certify that the above deposition was taken by me at the town of Saint Paul, county of Ramsey aforesaid, on the 10th day of January, in the year eighteen hundred and fifty-four; that it was taken on the part of the defendants, John M.

Castner and John S. Hinkley, upon verbal interrogatories; that it was reduced to writing by myself; that defendant, before examination, was by me sworn to testify the truth, the whole truth, and nothing but the truth, relative to the said cause; and that, after the said deposition was reduced to writing by me as aforesaid, it was carefully read to the said deponent, and that thereupon the same was sworn to and subscribed by him.

Dated January 10th, A. D. 1854.

JAMES K. HUMPHREY
Special Master in Chancery, to take proofs in Kinghorn vs. Symonds and als.

This indenture, made the twenty-sixth day of January, in the year one thousand eight hundred and fifty-three, between John M. Castner and John S. Hinkley of the first part, and Henry L. Moss, and Lafayette Emmett, of the county of Ramsey, Territory of Minnesota, of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of one thousand dollars, to them duly paid before the delivery hereof, have bargained and sold, and by these presents do grant and convey to the said parties of the second part, their heirs and assigns forever, all that tract or parcel of land lying and being in the county of Ramsey, and Territory of Minnesota, and known as lots number fourteen (14), fifteen (15), in block number thirty-three (33), in Rice & Irvine's addition to the town of St. Paul, in the county aforesaid, with the appurtenances, and all the estate, title, and interest of the said parties of the first part therein; and the said parties of the first part do hereby covenant and agree with the said part of the second part that at the time of the delivery hereof the said parties of the first part are the lawful owner of the premises above granted, and seized thereof in fee simple absolute, and that they will warrant and defend the above granted premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

JOHN M. CASTNER, [L. S.]
JOHN S. HINKLEY. [L. S.]

Sealed and delivered in presence of—the five lines from the 15th line from top were erased before the execution of his deed—

PHINEAS S. FISH,
ORLANDO SIMONS.

4904

TERRITORY OF MINNESOTA,
County of Ramsey, ss.

Be it remembered, that on this 26th day of January, 1853, personally came before the undersigned, John M. Castner and John S. Hinkley, personally known to me to be the identical persons who executed the within deed of conveyance, and they severally acknowledged that they signed, sealed, and delivered the within deed voluntarily and freely for the uses and purposes therein expresed.

In testimony whereof I hereto affix my hand, the day and year above written.

ORLANDO SIMONS,
Justice of the Peace.

(The foregoing endorsed as follows:)

Exhibit G. John M. Castner and John S. Hinkley to Henry L. Moss and Lafayette Emmett.

Warrantee Deed.

OFFICE OF REGISTER OF DEEDS,
Ramsey County, M. Ter.

I hereby certify that the within deed was filed in this office on the 4th day of March, A. D. 1853, at 12 o'clock m., and was recorded in book E of deeds, in pages 388.

M. S. WILKINSON,
Reg. of Deeds.
By H. P. SWEET,
Deputy.

Know all men by these presents that whereas, on the eighth day of May, A. D. eighteen hundred and fifty-two, at a term of the district court for the 1st judicial district, held at St. Paul, in and for the county of Ramsey, in the Territory of Minnesota, commencing on the first Monday in May of the year aforesaid, John M. Castner and John S. Hinkley recovered a judgment (in said court) against Daniel F. Brawley and Charles Symonds, (transacting business under the common name of Brawley & Symonds,) for the sum of one hundred and twenty-one dollars and seventy-four cents; and whereas by virtue of an execution issued on the above judgment, directed to me as sheriff of the county aforesaid, and there being no personal property belonging to said defendants to be found in my bailiwick, I, as sheriff of said county, levied upon lots numbered fourteen and fifteen, in block No. thirty-three (33), in Rice & Irvine's addition to town of St. Paul, with the appurtenances thereto belonging; also upon the northwest quarter of the northeast quarter, and lot No. two of section No. twelve, in township twenty-eight north, of range twenty-three west, of the 4th principal me-

ridian, all in the county aforesaid, as the property of said Symonds.

And whereas I, the said sheriff, did, in pursuance of the commands of said writ of execution, on the second day of October, A. D. aforesaid, sell at public auction all and singular the premises hereinbefore particularly described, having first given public notice of the time and place of said sale, by posting up notices thereof containing a description of said property, as required by law, in three public places in said county, and publishing said notice in the "Minnesota Democrat," a newspaper published in said county, and of general circulation therein, for six successive weeks prior to the time of said sale, as required by statute, at which time and place lot No. fourteen aforesaid was struck off to said Castner & Hinkley, plaintiffs in said suit, for the sum of thirty dollars; lot number fifteen aforesaid was struck off to said Casten & Hinkley for the sum of sixty-five dollars; and lot two aforesaid, and the northwest quarter of the northeast quarter in the section aforesaid, was struck off to said Castner & Hinkley for the sum of sixty-five dollars; and lot two aforesaid, and the northwest quarter of the northeast quarter in the section aforesaid, was struck off to said Castner & Hinkley for the sum of fifty-five dollars, they being in every instance the highest and best bidders.

And whereas upon such sale I, George F. Brott, as sheriff aforesaid, gave to John M. Castner and John S. Hinkley, the purchasers as aforesaid, an acknowledge certificate of said sale, and filed a duplicate thereof, containing a particular description of the property sold as aforesaid, the price bid for each distinct lot or parcel, the whole price paid, and containing also a statement that the same was subject to redemption in the manner provided by law, with the register of deeds of the county aforesaid.

Now, therefore, I, George F. Brott, as sheriff of the county aforesaid, in order to carry into effect the provisions of the sale aforesaid, no part of such property having been redeemed within the time limited by law, and by virtue of the statute in such case made and provided, in consideration of the premises and of the several sums hereinbefore named, paid at the time of said sale by the said John M. Castner and John S. Hinkley, plaintiffs as aforesaid, to me as sheriff aforesaid, the receipt whereof I do hereby acknowledge, have, as sheriff aforesaid, granted, bargained, sold, and conveyed, and by these presents do hereby grant, bargain, sell, and convey, unto the said John M. Castner and John S. Hinkley, their heirs and assigns forever, all the right, title, and interest and estate of the said Charles Symonds in and to the property aforesaid, at the time of the rendition of judgment aforesaid—that is to say, the title, interest, and estate of said Symonds in lot No. fifteen and lot No. fourteen, in block No. thirty-three, in Rice & Irvine's addition to the town of St. Paul, with the ap-

purtenances; also the northwest quarter of the northeast quarter, and lot No. two, of section No. twelve (12,) in township No. twenty-eight (28) north, of range twenty-three west, of the 4th principal meridian, all in the county of Ramsey aforesaid: to have and to hold the same, with the appurtenances, to the said John M. Castner and John S. Hinkley, their heirs and assigns forever.

In witness whereof I, the said George F. Brott, as sheriff aforesaid, have hereunto set my hand and seal, this 6th day of December, A. D. eighteen hundred and fifty-two.

(Interlined in three places before signing.)

GEORGE F. BROTT. [SEAL.]

Signed, sealed, and delivered in the presence of—

L. EMMETT,
H. L. MOSS.

TERRITORY OF MINNESOTA,
County of Ramsey, ss.

Be it known, that on this 7th day of December, A. D. eighteen hundred and fifty-two, before me, the subscriber, a justice of the peace in and for the county aforesaid, personally came George F. Brott, the grantor in the above conveyance, and acknowledged the same to be his voluntary act and deed, as sheriff of the county aforesaid, and for the uses and purposes therein mentioned.

J. M. STONE,
Notary Public.

(The foregoing endorsed as follows:)

"Exhibit H." "Sheriff of Ramsey Co."—"To Castner & Hinkley." "Office of Reg. of Deeds, Ramsey county, M. T." "The within deed was filed in this office on the 8th day of Dec., A. D. 1852, at 8 o'clock p. m., and was duly recorded in book D of deeds, on pages 559 and 560." "M. S. Wilkinson, Register." "By C. W. Babcock, Deputy."

The deposition of J. R. Brewster, a witness produced, sworn, and examined on the part of the defendants, in the action wherein David Kinghorn is complainant, and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, before me, James K. Humphrey, special master in chancery to take the proofs in said action, at my office, in the town of St. Paul, county of Ramsey, and Territory of Minnesota, on the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-four.

J. R. Brewster, being first by me duly sworn, testified as follows:

I know the house where Mr. Symonds lives—where Mr. Robertson lived awhile; I do not know the lots by their numbers, but I

think it was the house Mr. Symonds occupied in 1852, and the one he occupied in 1852, and the ones he occupies now. Some time in August, 1852, I was at the place, and saw a man there, purporting to be the hired man of Mr. Symonds; I do not remember his name. Mr. Symonds, before he went away, referred me to him as his agent. I think it was about the 11th day of August, 1852, that I called there at that time; there was a man there; I think he slept there, from the appearance of things. Shortly after that, I was at the house with a man to help me paint the inside of the building; it appears to me that the house was unoccupied then. We did not spend—I do not recollect definitely—but one day; I think we finished painting in one day; I think the painting was done and finished the last of August or the first day of September, in the year 1852.

J. R. BREWSTER.

Sworn to and subscribed before me, this 4th day of January, 1854.

JAMES K. HUMPHREY,
Special Master.

TERRITORY OF MINNESOTA,
Ramsey County, ss.

I, James K. Humphrey, special master in chancery to take the proofs in the cause wherein Daniel Kinghorn is complainant and Charles Symonds, John M. Castner and John S. Hinkley are defendants, do hereby certify that the above deposition was taken by me at my office, in the town of St. Paul, and county of Ramsey, on the fourth day of January, in the year one thousand eight hundred and fifty-four; that it was taken at the request and on the part of the defendants, John M. Castner and John S. Hinkley, upon verbal interrogatories; that it was reduced to writing by myself; that said deponent before examination was by me sworn to testify the truth, the whole truth, and nothing but the truth, relative to the said cause; and that after the said deposition was reduced to writing by me as aforesaid, it was carefully read to the said deponent; and that thereupon the same was sworn to and subscribed by the said deponent.

Dated St. Paul, January 4th, 1854.

JAMES K. HUMPHREY,
Special Master to take proofs in Kinghorn vs. Symonds and others.

The deposition of Charles N. Daniels, a witness produced, sworn, and examined on the part of the defendants, in the action wherein David Kinghorn is complainant, and Charles Symonds, John M. Castner and John S. Hinkley are defendants, before me, J. K. Humphrey, special master in chancery to take the proofs in said

cause at my office, in the town of St. Paul, county of Ramsey and territory of Minnesota, on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-four.

Charles N. Daniels, being first by me duly sworn, testified as follows: I am acquainted with Charles Symonds, one of the defendants in this action. I saw Mr. Symonds in July or August, 1852. He called at my house and presented a bill for ice; said he wanted money pretty badly; said Castner had sold a house for him while he was gone, and he wanted money to redeem it. He came to my house afterwards, sometime about January, 1853. I asked him how he and Castner got along; he said the time had slipped by one day, and Castner would not accept the money; that he meant to keep Castner out of the money as long as he could, but that he had made a mistake, and let one day too much pass.

(Objected to by counsel for defendant.)

C. N. DANIELS.

Sworn to and subscribed before me, this 10th day of Jan'y, 1854.

JAMES K. HUMPHREY.
Master in Chancery.

TERRITORY OF MINNESOTA,
Ramsey County, ss.

I, James K. Humphrey, special master in chancery, to take the proofs in the cause wherein David Kinghorn is complainant, and Charles Symonds, John M. Castner, and John S. Hinkley are defendants, do hereby certify that the above deposition was taken by me at my office, in the town of Saint Paul, and county of Ramsey, on the tenth day of January, in the year one thousand eight hundred and fifty four; that it was taken at the request and on the part of the defendants, John M. Castner and John S. Hinkley, upon verbal interrogatories; that it was reduced to writing by myself; that said deponent before examination was by me sworn to testify the truth, the whole truth, and nothing but the truth, relative to the said cause; and that after the said deposition was reduced to writing by me as aforesaid, it was carefully read to the said deponent; and that thereupon the same was sworn to and subscribed by the said deponent.

Dated at St. Paul, this 10th day of January, A. D. 1854.

JAMES K. HUMPHREY,
Special Master to take proofs in
Kinghorn vs. Symonds and others.

(The foregoing papers attached together and endorsed as follows:) District court, Ramsey county—In equity. David Kinghorn ag'st Charles Symonds, John M. Castner & John S. Hinkley. Depositions and interrogatories. James K. Humphrey, special master. Filed March 14th, 1854. Sherwood Hough, deputy clerk."

TERRITORY OF MINNESOTA,
1st District, Ramsey county.

To Charles Symonds, John M. Castner & John S. Hinkley, defendants.

You are hereby commanded, in the name of the United States, to appear before the district court, of the county of Ramsey, in the first judicial district of the Territory of Minnesota, at St. Paul, in said county, on or before the fifth day of March, A. D. 1853, to answer a bill of complaint in chancery, exhibited against you by David Kinghorn, complainant, and on file in the office of the clerk of the district court for said county and to do further what the said court may order or direct; and this you are not to omit under the penalty which may be imposed by law.

Witness the Hon. Henry Z. Hayner, judge of said district court, [L. S.] at St. Paul, in said county, this 19th day of February, A. D. 1853.

JAMES K. HUMPHREY, *Clerk.*
By SHERWOOD HOUGH, *Dept. Cl'k.*

The foregoing endorsed as follows:

"District court, Ramsey county. David Kinghorn vs. Charles Symonds, John M. Castner & John S. Hinkley. Subpœna in chancery." "Issued in chancery." Feb'y 19th, 1853. Sherwood Hough, dept. clerk.

"Ret'd Feb'y 24th, 1853."

JAMES K. HUMPHREY, *Clerk.*

RAMSEY COUNTY, *ss.*

Personally served the within subpœna in chancery, by giving the within named Charles Symonds a true and certified copy in hand, at St. Paul, Feb'y 21st, 1853.

GEO. F. BROTT, *Sheriff.*

Fees $1 50.

Also by giving the within named John M. Castner and John S. Hinkley a true and certified copy of the within, in hand, at St. Paul, Feb'y 21st, 1853.

GEO. F. BROTT, *Sheriff.*
By S. B. GARVIE, *Deputy.*

Service	1 50
Mile	40
Copies	60
	$2 50

Ramsey County, District Court, in chancery, to the Hon. H. Z. Hayner, judge of the first judicial district of the Territory of Minnesota:

Humbly complaining, your orator, David Kingborn, of the county of Dakota, and Territory of Minnesota, (which said county of Dakota is attached to the said county of Ramsey for judicial purposes,) shows unto your honor, that on the twenty-ninth day of May, one thousand eight hundred and fifty-two, Charles Symonds, of the county of Ramsey, and Territory of Minnesota, made to your orator his certain promissory note, bearing date on that day, for the sum of five hundred and fifty dollars, payable four months after date, with interest after due at the rate of two and one-half per cent. per month, as by the said note, ready to be produced by your orator as this court shall direct, will more fully appear.

And the said Charles Symonds, to secure the payment of principal and interest mentioned in the said note, did, at the same time, execute under his hand and seal, and deliver to your orator, a mortgage bearing even date with the said note, and conditioned for the payment of the said sum of five hundred and fifty dollars, with the interest thereon, according to the conditions of the said note, by which the said mortgagor mortgaged unto your orator in fee certain lands and real estate, situate, lying, and being in the town of Saint Paul, Ramsey county, and Territory of Minnesota, and known and designated as follows, viz: Lots numbered fourteen (14) and fifteen (15), in block numbered thirty-three (33), in Rice and Irvine's addition to the town of Saint Paul, being the same land deeded to the said Symonds by H. M. Rice and wife, by deed bearing date the fourteenth day of September, in the year of our Lord one thousand eight hundred and fifty- ; which mortgage was duly acknowledged, and was afterwards recorded as a mortgage in the office of the register of deeds of the county of Ramsey, on the twenty-ninth day of May, one thousand eight hundred and fifty-two, at three o'clock and thirty minutes in the afternoon, in book "B" of mortgages, on pages 75 and 76, as by the said mortgage, and the certificates of acknowledgment, and of the recording aforesaid endorsed thereon, and ready to be produced as this court shall direct, will more fully appear.

And your orator believes and states that the sum of five hundred and fifty dollars, with interest from the 29th day of September, one thousand eight hundred and fifty-two, remains due and unpaid to your orator upon the said note and mortgage, and that no proceedings at law have been had to recover the debt secured by the said note and mortgage, or any part thereof.

And your orator believes and states that John M. Castner and John S. Hinkley have or claim some interest in the said mortgaged premises, or in some part thereof, as purchasers, mortgagees, or

otherwise; which interests, if any, have accrued subsequent to the lien of the mortgage of your orator, and are subject thereto.

Your orator therefore asks the aid of this court in the premises, and that the above named Charles Symonds, John M. Castner, and John S. Hinkley, the defendants in this suit, may appear before the said court, and answer this your orator's bill according to the rules and practice of the said court without oath, their answers on oath being hereby waived; and that the usual decree may be made for the sale of the mortgaged premises aforesaid, and for the payment of the amount due to your orator for principal and interest upon the said note and mortgage, and his costs of this suit; and that the said defendants, and all persons claiming under them subsequent to the commencement of this suit, and all other persons, although not parties to this suit, who have any liens by judgment or decree upon the mortgaged premises subsequent to the said mortgage of your orator, or any liens or claims thereon by or under any such subsequent judgment or decree, either as purchasers, incumbrances, or otherwise, may be barred and foreclosed of all equity of redemption of the said premises; and that your orator may have such further or such other relief as the nature of the case may require, and as to this court may seem proper and agreeable to equity.

May it please your honor to grant unto your orator the writ of subpœna, out of and under the seal of this honorable court, to be directed to the said Charles Symonds, John M. Castner, and John S. Hinkley, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, to be and appear before the said court, then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience. And your orator shall ever pray, &c.

MURRAY & WILLIAMS,
Compl'ts Sol'rs.

The foregoing endorsed as follows:

District court for Ramsey county. David Kinghorn vs. Charles Symonds, John M. Castner, and John S. Hinkley. Bill filed Feb'y 19th, 1853. Sherwood Hough, dep'y cl'k. Murray & Williams, sol'r for compl'ts.

Ramsey County, Dist. Court.

DAVID KINGHORN
vs.
CHARLES SYMONDS, JOHN M. CASTNER and JOHN S. HINKLEY.

The subpœna in the above entitled cause having been returned

served by the sheriff of the county of Ramsey, on motion of Murray & Williams, of counsel for the complainant, it is hereby ordered that the defendants file their plea, answer, or demurrer to the bill of complaint of the complainant in the above entitled cause within thirty days from the date of this order.

Dated March 9, 1853.

MURRAY & WILLIAMS,
Sol'rs for Compl't.

The foregoing endorsed as follows:

Dist. court for Ramsey county. David Kinghorn vs. Charles Symonds, John M. Castner, and John S. Hinkley. Order to answer. Filed March 9th, 1853. Sherwood Hough, dep't clerk.

District Court, first judicial district, Ramsey county.

The joint and several answers of John M. Castner and John S. Hinkley, two of the defendants to the bill of complaint of David Kinghorn, complainant.

These defendants respectively now, and at all times hereafter, saving to themselves all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to do so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say, that on the eighth day of May, A. D. 1852, they obtained a judgment in the district court of the first district, in the county of Ramsey, against the defendants, Charles Symonds and one Daniel F. Brawley, for the sum of one hundred and twenty-one dollars and seventy-four cents; which judgment, on the said eighth day of May, A. D. 1852, was docketed with the clerk of the court aforesaid, for the county aforesaid, and thereupon became a lien upon the property in the said bill of complaint described.

And these defendants further answering say, that afterwards, to wit, on the 19th day of July, A. D. 1852, a writ of execution issued out of and under the seal of said court upon the judgment aforesaid, duly signed by the attorneys for the plaintiffs said judgment, and directed to the sheriff of said county, by virtue of which writ of execution the said sheriff, on the 17th day of August, A. D. 1852, levied upon the property aforesaid, and on the second day of October following, at the town of St. Paul, in said county, exposed the same to sale, according to law, to satisfy said judgment and execution; at which said sale these defendants were the highest bidders for and became the purchasers of the property in said bill of complaint described.

That afterwards, to wit, on the 6th day of December, 1852, the said sheriff duly executed and delivered to these defendants a good and sufficient deed for the property aforesaid.

That on the 26th day of January, A. D. 1853, these defendants, for and in consideration of the sum of one thousand dollars, executed and delivered to Henry L. Moss and Lafayette Emmett, both of the county aforesaid, a deed in fee simple for the property aforesaid, with the usual covenants of warranty; by which said deed all their title and interest in and to the same passed to and became vested in said Moss and Emmett.

And these defendants further deny, that their interest in the said property as aforesaid accrued subsequent to the lien of the mortgage in the said bill of said complainant described, or is subject therto.

And these defendants deny that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, true to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to aver, maintain, and prove, as this Hon. court shall direct; and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN M. CASTNER,
JOHN S. HINKLEY.

MASTERSON & SIMONS,
Sol'rs for Def'ts Castner and Hinkley.

The foregoing endorsed as follows: "District Court, Ramsey county—In Chancery—David Kinghorn vs. Charles Symonds, John M. Castner, and John S. Hinkley—Answer of Castner and Hinkley—Filed April 8, 1853—James K. Humphrey, cl'k—Masterson and Simons, Solicitors."

District Court for Ramsey county.—In Ch'y.

DAVID KINGHORN
vs.
CHARLES SYMONDS, JOHN M. CASTNER,
and JOHN S. HINKLEY.

The replication of David Kinghorn, complainant, to the joint and several answer of John M. Castner and John S. Hinkley, defendants.

This repliant, saving and reserving *rests* himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by

this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed and denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays, as in and by his said bill he hath already prayed.

MURRAY & WILLIAMS,
Sol'rs for Compl't.

(The foregoing endorsed as follows:)

Dist. court for Ramsey county. David Kinghorn vs. Charles Symonds and others. Replication. Filed April 26th, 1853. James K. Humphrey, cl'k. Murray and Williams, compl'ts sol'rs.

Territory of Minnesota, District Court for Ramsey County.

DAVID KINGHORN
vs.
CHARLES SYMONDS, JOHN M. CASTNER, and JOHN S. HINKLEY.

Whereas, on the twenty-first day of Feb'y, 1853, the subpœna duly issued in the above cause was personally served upon the above named defendant, Charles Symonds, by George F. Brott, sheriff of said county, and by him returned and filed in this court, with due proof of said service; and whereas an order was duly entered in the clerk's office of this court on the ninth day of March, 1853, requiring the defendants in the above cause to file their answer, plea, or demurrer to the bill of complaint in the said cause within thirty days from the date of the said order; and whereas more than thirty days have elapsed since the filing of said order; and whereas no plea, answer, or demurrer has been filed in the said cause by the said Charles Symonds, on motion of Murray and Williams, solicitors for complainant, it is ordered that the bill of complaint which is filed in this cause be, and the same is hereby, taken as confessed as against the said Charles Symonds.

MURRAY & WILLIAMS,
Sol'rs for Compl'ts.

The foregoing endorsed as follows: "District court, Ramsey Co. David Kinghorn vs. Charles Symonds and others. Order for Confesso. Murray & Williams, compl'ts sol'rs."

Territory of Minnesota, 2d Dist.

DAVID KINGHORN
against
CHARLES SYMONDS, JOHN M. CASTNER, and JOHN S. HINKLEY.

This cause having been brought on to be heard on the tenth in-

stant upon the bill of complaint filed therein, taken as confessed by the defendant, Charles Symonds, and upon the pleadings and proofs as to all the other defendants, and Mr. Rice, counsel for the complainant, and Mr. Masterson, of counsel for the defendants, having been heard therein, and the court having duly considered the same, it is ordered, adjudged, and decreed that the defendants pay to the complainant or his solicitors the amount due for principal and interest on the note and mortgage mentioned in the bill of complaint—that is to say, the sum of eight hundred and eighty dollars and fifty-two cents, with interest thereon from the date hereof, together with the complainant's costs in this cause to be taxed, within twenty days after entry of this decree and notice of such entry; and in default of payment thereof by the time above specified, then that the said mortgaged premises described as follows, viz: lots numbered fourteen and fifteen, in block number thirty-three, in Rice and Irvine's addition to the town of St. Paul, be sold at public auction, by or under the direction of George W. Prescott, esq., who is hereby appointed by the court to make sale thereof; that said sale be made in the county of Ramsey, where said premises are situated; that said George W. Prescott give public notice of the time and place of such sale, by publishing such notice for six successive weeks immediately preceding such sale in the Minnesota Democrat, a public newspaper printed in said county; that the complainant, or any of the parties to this suit, may become the purchasers or purchaser at said sale; that the said George W. Prescott execute a deed to the purchasers or purchaser at said sale, and that out of the proceeds of said sale he retain his fees, disbursements, and commissions thereon, and pay said complainant or his solicitors their costs, adjudged to them as aforesaid, and also pay to the complainant or his solicitors the amount adjudged to be due to him for principal and interest on the note and mortgage as aforesaid, with interest thereon from the date hereof; and that he take receipts for the amounts so paid, and file the same with his report of such sale; and that he bring the surplus moneys arising from said sale, if any there be, into court without delay, to abide the further order of this court.

And it is further adjudged that the defendants, and all persons claiming or to claim from or under them, and all persons having a lien subsequent to such mortgage, by judgment or decree upon the said mortgaged premises, and his or other personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree, and their heirs or personal representatives, and all persons claiming under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof.

And it is further adjudged that the purchasers or purchaser of

said mortgaged premises at such sale be let into possession thereof; and that any of the parties in this cause who may be in possession of said premises or any part thereof, and any person who since the commencement of this suit has come into possession under them or either of them, deliver possession thereof to such purchasers, on production of said George W. Prescott's deed for said premises, and a certified copy of the order confirming the report of such sale, after such order has become absolute.

And it has been further adjudged, that if the moneys arising from said sale shall be insufficient to pay the amount so due as aforesaid, with the interest and costs and expenses of sale aforesaid, that the said George W. Prescott specify the amount of said deficiency in his report of said sale; and that on the coming in and confirmation of said report the defendant, Charles Symonds, who is personally liable for the payment of the debt secured by the said mortgage, pay to the complainant the amount of such deficiency, with interest thereon from the date of such last mentioned report, and that said complainant have execution therefor.

M. SHERBURNE, *Judge.*

At chambers, Nov. 14, '53.

Rece'd due notice of the entry of a decree, of which the foregoing is a copy.

Dated Nov. 14th, 1854.

MASTERSON & SIMONS,
Sol'rs for Def'ts Castner and Hinkley.

The foregoing endorsed as follows: District court, Ramsey co. David Kinghorn vs. Charles Symonds et al. Decree. Filed Nov. 14, 1854. Geo. W. Prescott, clerk. Murray and Williams, compl'ts sol'rs.

Territory of Minnesota, 2d Dist., District Court for Ramsey Co.

Costs and disbursements in foreclosure suit for compl't.

DAVID KINGHORN
vs.
CHARLES SYMONDS, JOHN M. CASTNER, and JOHN S. HINKLEY.

Stated Costs.

For proceedings before notice of trial	$12 00
" " after " "	7 00
" trial fee	15 00
" two term fees	20 00
	$54 00
Sh'ff's fees: Serving subpœnas	4 00
Four copies of bill, each 10 folio	4 00
Two " replication, 2 folio	40

James K. Humphrey, taking testimony.....	6 00
Notary making oath to bill.....	25
	68 65
Clerk's fees, (added subsequently).....	6 21
	$74 86

TERRITORY OF MINNESOTA,
Ramsey County, ss.

Anzy L. Williams, being duly sworn, says he is one of the solicitors for the complainant in the foregoing entitled action, and that the foregoing bill of costs have been actually paid or incurred, according to his best knowledge and belief.

ANZY L. WILLIAMS.

Sworn and subscribed before me, this 16th day of Nov., 1854.

GEO. W. PRESCOTT, *Clerk.*

We hereby acknowledge notice of taxation of costs in the above case, to be taxed Nov. 18th, 1854.

Dated Nov. 16, 1854.

MASTERSON & SIMONS,
Sol'rs for Castner and Hinkley.

The defendants not appearing, either in person or by counsel, I hereby tax the foregoing bill of costs at $74 86, this 18th day of Nov., 1854.

GEO. W. PRESCOTT, *Clerk.*

Territory of Minnesota, District Court, 2d District, County of Ramsey.

DAVID KINGHORN
against
CHARLES SYMONDS, JOHN M. CASTNER, and JOHN S. HINKLEY.

The court having, on the 14th day of November, A. D. 1853, ordered, adjudged, and decreed in this cause as follows, to wit, it is ordered, adjudged, and decreed, that the defendants pay to the complainant, or his solicitors, the amount due for principal and interest on the note and mortgage mentioned in the bill of complaint—that is to say, the sum of eight hundred and eighty dollars and fifty-two cents, with interest thereon from the date hereof, together with the complainant's costs in this cause, to be taxed within twenty days after entry of this decree, and notice of such entry; and in default of payment thereof by the time above specified, then that the said mortgaged premises described as follows, viz., lots numbered fourteen and fifteen, in block number thirty-three, in

Rice and Irvine's addition to the town of St. Paul, be sold at public auction, by or under the direction of George W. Prescott, esq., who is hereby appointed by the court to make sale thereof; that said sale be made in the county of Ramsey, where said premises are situated; that said George W. Prescott give public notice of the time and place of such sale, by publishing such notice, for six successive weeks immediately preceding such sale in the Minnesota Democrat, a public newspaper printed in said county; that the complainant, or any of the parties to this suit, may become the purchasers or purchaser at said sale; that the said George W. Prescott execute a deed to the purchasers or purchaser at said sale, and that out of the proceeds of said sale he retain his fees, disbursements, and commissions thereon, and pay said complainant, or his solicitors, their costs adjudged to them as aforesaid, and also pay to the complainant, or his solicitors, the amount adjudged to be due to him for principal and interest on the note and mortgage as aforesaid, with interest thereon from the date hereof, and that he take receipts for the amounts so paid, and file the same with his report of such sale, and that he bring the surplus moneys from said sale, if any there be, into court without delay, to abide the further order of this court; and it is further adjudged that the defendants and all persons claiming or to claim from or under them, and all persons having a lien subsequent to such mortgage, by judgment or decree upon the said mortgaged premises, and his or their personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree, and their heirs or personal representatives, and all persons claiming under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof. And it is further adjudged, that the purchasers or purchaser of such mortgaged premises at such sale be let into possession thereof, and that any of the parties in this cause who may be in possession of said premises, or any part thereof, and any person who, since the commencement of this suit, has come into possession under them, or either of them, deliver possession thereof to such purchasers or purchaser, on production of the said George W. Prescott's deed for said premises, and a certified copy of the order confirming the report of such sale, after such order has become absolute. And it is further adjudged, that if the moneys arising from such sale be insufficient to pay the amount so due as aforesaid, with the interest and *cots* and expenses of sale aforesaid, that the said George W. Prescott specify the amount of said deficiency in his report of said sale, and that on the coming in and confirmation of said report, the defendant, Charles Symonds, who is personally liable for the payment of the debt secured by the said mortgage, pay to the complainant the amount of such deficiency, with interest thereon

from the date of such last mentioned report, and that said complainant have execution therefor."

Now, on motion of Messrs. Murray and Williams, solicitors for the plaintiff, the above and foregoing judgment and decree is entered as the judgment of this court. And it is further adjudged that the plaintiff, David Kinghorn, recover the sum of seventy-four dollars and eighty-six cents for his costs and disbursements in this action, by me taxed; making in all the sum of nine hundred and fifty-five dollars and seventy-two cents, adjudged to be due from the defendant, Charles Symonds, to the said plaintiff, ($955 72.)

Dated this 16th day of November, A. D. 1854.

GEO. W. PRESCOTT, *Clerk.*

Statement for Judgment.

Statute costs	54 00
Clerk's fees	6 21
Other disbursements, as verified by aff	14 65
Am't adjudged due in decree	880 52
In't on same, two days	34
	$955 72

The foregoing endorsed as follows:

"District Court, Ramsey County. David Kinghorn against Charles Symonds, John M. Castner, and John S. Hinkley. Judgment-Roll. Filed Nov. 18th, 1854. Geo. W. Prescott, Clerk."

District Court, 1st District, Minnesota Territory, Ramsey County.

JOHN M. CASTNER and JOHN S. HINKLEY
vs.
DANIEL F. BRAWLEY and CHARLES SYMONDS.

George F. Brott, being duly sworn, as hereinafter certified, says that he is and was the sheriff to whom the writ of execution issued upon the judgment in the above entitled action, and that the same was executed in the return of this deponent, as sheriff aforesaid, to said writ, and endorsed thereon. That shortly after said levy was made upon the property aforesaid, about the 7th day of September, and immediately after the return of said def't, Symonds, to this Territory, this deponent informed said Symonds that the property in said return described had been levied upon by deponent as sheriff aforesaid, to satisfy the execution aforesaid, and that said property was advertised for sale in the Minnesota Democrat, a newspaper published in said county, and should be sold, unless said execution was otherwise sooner satisfied, on the 2d day of October, then next ensuing. That said Symonds remarked that there was then enough, and that he would attend to the matter before the day of sale. That on said second day of October, this deponent

again sent word to said Symonds that said property was to be sold on that day, and was returned for answer "to go ahead."

That thereupon he proceeded and sold all of said property in separate parcels, as stated in said return to said plaintiffs, for the aggregate sum of $150, they, the said plaintiffs, paying in money, the excess of their several bids, over and above the amount of the judgment aforesaid. That on the 7th day of December, 1852, the time for the redemption of said property having expired, and said Symonds having failed to redeem the same, this deponent, as sheriff aforesaid, executed and delivered to said plaintiffs, as purchasers aforesaid, a deed duly acknowledged, for all of the said property sold as aforesaid, as required by statute. That before the expiration of sixty days from said sale, said Symonds inquired of deponent at what time the time for redemption would expire, as he said he meant to make the plaintiffs wait until the very last day for their money, and that deponent informed him that the time expired in 60 days from the 2d day of October, which he might calculate for himself, referring him for certainty to the records in the office of the clerk of the court aforesaid; and deponent says that he did not tell said Symonds that said time expired on the 2d day of December.

That said Symonds never paid to deponent any money for the redemption of said property until after the time for redemption had expired, and then only for $146 68; which deponent a few days thereafter paid out to other persons, under the direction of said Symonds.

GEO. F. BROTT.

Sworn to and subscribed before me, at St. Paul, M. T., this 17th day of January, 1853.

ORLANDO SIMONS,
Justice of the Peace.

TERRITORY OF MINNESOTA,
County of Ramsey, ss.

John M. Castner, being duly sworn, says that he is one of the plaintiffs in the above entitled action, and bid off the property mentioned in the return of the execution issued on said judgment. That if there was any omission or irregularity on the part of the sheriff in levying said execution, that the plaintiffs were entirely ignorant thereof at the time of said sale, and at the time of the execution and delivery of the deed of said sherif to the pl'ffs, as purchasers of said property, and have no knowledge at this time, except as appears by the affidavit of said def't, Symonds, on file in this proceeding. That long before said sale, on or about the 8th day of Sept., 1852, immediately after his return to this Territory, said Symonds spoke to deponent of the levy of said execution upon the

property sold, and spoke of the same being advertised for sale by the sheriff aforesaid; assured deponent that he would raise the money to pay off said execution, and expressed a great desire to keep his wife in ignorance of the transaction.

And this deponent further says, that said purchase was made in good faith, and without notice to the def'ts of any irregularity or omission on the part of said sheriff. That said sale was made in the presence of a large number of persons, at one of the most public places in the county aforesaid, and where a notice of said sale was posted up, as required, and that the aggregate sum of $150 was all said property would bring.

That said lots 14 and 15 could not, even without encumbrance, be sold at this time under the hammer for over ten hundred dollars; and that deponent has been informed by said Symonds that there were, at the time of said sale, mortgages existing thereon to the amount of over $900.

JOHN M. CASTNER.

Sworn to and subscribed before me, at St. Paul, Min. Ter., this 17th day of January, 1853.

ORLANDO SIMONS,
Justice of the Peace.

TERRITORY OF MINNESOTA,
The District Court, 1st District, Ramsey County, ss.

JOHN M. CASTNER and JOHN S. HINKLEY
against
DANIEL F. BRAWLEY and CHARLES SYMONDS.

Charles Symonds, one of the defendants in this action, being duly sworn, says that on the 8th day of May, 1852, a judgment was rendered in an action in favor of said plaintiffs and against said defendants, for the sum of one hundred twenty-one dollars and seventy-four cents; that afterwards a writ of execution issued out of this court directed to the sheriff of said county, and to him delivered, commanding him, among other things, to satisfy such judgment out of the personal property of said defendants , and if sufficient personal property could not be found, then out of the real property of said defendants; that on the second day of October, 1852, George F. Brott, esquire, sheriff of said county, sold, or pretended to sell, as such sheriff, the following described real estate belonging to this defendant, under and by virtue of said execution, that is to say, number fourteen and fifteen, in block number thirty-three, in Rice & Irvine's addition to St. Paul; and lot number two, of section number twelve, in township number twenty-eight north, of range number twenty-two west, of which this deponent was part owner; that said property was all sold, in the aggregate, for the sum of $150, as appears by the sheriff's re-

turn to said execution. That, from a printed notice of such sale and the return aforesaid, which with the execution is on file in the office of the clerk of this court, it is pretended that a levy was made upon said property on the 17th day of August, 1852. That on the day last aforesaid this deponent was absent from St. Paul, in said county, where he resided and where said premises are situated, having left on a visit to Boston, Massachusetts, but that Austin Wooley and Isabella Wooley were, or before and after the 17th day of August, 1852, occupying the premises above described as lots 14 and 15, in block No. 33, in Rice & Irvine's addition to St. Paul, and keeping house for this deponent in a dwelling situate on the lots last aforesaid, and that no copy of execution was left with said occupants, or either of them, or any other occupant of said premises, or in any conspicuous place upon said premises, and that only three notices of such sale were posted in said county. That this deponent returned to St. Paul aforesaid on the 5th day of September, 1852, and that it was not until about ten days before said pretended sale that he was aware an execution had been issued in said cause; that he was then unable to raise the amount claimed thereby before the 2d of October, 1852, nor, indeed, until 60 days thereafter had nearly expired. That, on the second day of December, this deponent (not being then aware that the sheriff had omitted to comply with the law in respect to the levy upon said property and posting notices of sale) tendered to said sheriff, for the redemption of said property, the sum of $146 68, which was recovered by him conditionally, that is, that the plaintiff would recover the same, or the time for redemption had not expired, as will appear by his receipt, marked "A," and hereto annexed; this deponent then believing that the time for the redemption aforesaid had expired, the said sheriff having said to deponent, a few days previous, that he thought the time to redeem would expire on that day.

This deponent further says that said sheriff said plaintiffs refused to receive said money, and apply it in redemption of said property. That lots No. 14 and 15, in block 33, with the appurtenances, are worth the sum of $1,000, over and above all encumbrances thereon.

C. SYMONDS.

Sworn and subscribed before me, this 11th day of December, 1852.

J. M. STONE,
Notary Public.

Exhibit marked "A," referred to in the annexed affidavit.

JOHN M. CASTNER and JOHN S. HINKLEY
ag'st
DANIEL F. BRAWLEY and CHARLES SYMONDS.

Received of Charles Symonds the sum of one hundred and forty-six dollars and sixty-eight cents, for redemption of the property sold on execution, issued in the above cause, provided the tender to me is accepted by the above named plaintiffs, as ascertained to be within the time required by law in such cases provided.

GEO. F. BROTT, *Sheriff.*

St. Paul, Ramsey Co., Dec. 2, 1852.

DISTRICT COURT, 1ST DISTRICT,
Ramsey County, ss.

JOHN M. CASTNER, JOHN S. HINKLEY,
against
DANIEL F. BRAWLEY and CHARLES SYMONDS.

L. EMMETT, Esq., *Att'y for Pl'ffs.*

Please take notice, that the district court for the 1st district and county of Ramsey, at a special session thereof, on the 1st Tuesday of January next, will be moved, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, to vacate the sale of the premises described in the affidavit of Charles Symonds; a copy of which is herewith served upon you by the sheriff of said county, under and in virtue of the execution in this action, and also all proceedings under said execution subsequent to said sale, for the reasons:

1st. That there was no valid levy upon said premises of said execution.

2d. That the notice of such sale was insufficient.

Which motion will be founded on the affidavit aforesaid, the execution and return thereto now on file, and the judgment-roll in said cause. The defendant will ask for costs on said motion.

Yours, &c.,

RICE, HOLLINSHEAD & BECKER,
Att'ys for Def't Symonds.

Dated Dec. 20th, 1852.

The foregoing endorsed as follows:

"District Court, 1st district, Ramsey county. John M. Castner et al. against Daniel F. Brawley and Charles Symonds. Aff't and motion to set aside sale on ex'n. Filed Jan'y 22d, 1853. Sherwood Hough, def't clerk. Rice, Hollinshead & Becker, att'ys for Symonds."

Also endorsed:

"Motion denied, without costs to either party. H. Z. Hayner."

JOHN M. CASTNER and JOHN S. HINKLEY
against
DANIEL F. BRAWLEY and CHARLES SYMONDS.

This cause came on to be heard, upon the motion of the defendants to vacate the sale of the premises sold by the sheriff of Ramsey county, under and by virtue of an execution issued in this action, and also to vacate all proceedings under said execution subsequent to sale, and was argued by counsel. Whereupon, the court being fully advised in the premises, it is ordered that said motion be denied, without costs to either party.

January 22d, 1853.

The foregoing endorsed as follows: John M. Castner vs. Charles Symonds et al.—Copy of order.—Filed Jan'y 22d, 1853.—James K. Humphrey, cl'k.

District Court, first judicial district, Ramsey County.

JOHN M. CASTNER and JOHN S. HINKLEY, Plffs.,
vs.
BRAWLEY and SYMONDS, Defendants.

You are hereby summoned and required to answer the complaint in the above entitled case, filed in the office of the clerk of the court aforesaid by said plaintiffs, and serve a copy of your answer on the undersigned, at his office, in the city of St. Paul, in the county aforesaid, within twenty days after the service hereof upon you, exclusive of the day of service; and take notice, that if you fail to answer said complaint as above, the plaintiff will take judgment against you for the sum of one hundred and seventy-five dollars, and interest thereon from the first day of August, A. D. 1851.

Feb'y 12, 1852.

L. EMMETT,
Pl'ffs Att'y.

To BRAWLEY AND SYMONDS, *St. Paul, Min.*

The foregoing endorsed: District court, Ramsey county. John M. Castner and John S. Hinkley, plaintiffs, vs. Brawley and Symonds, defendants. Summons and notice rec'd by me, Feb'y 12, 1852.—A. J. Whitney, deputy sheriff. Filed Feb'y 28, 1852. James K. Humphrey, cl'k. This writ 50. L. Emmett, pl'ffs att'y.

TERRITORY OF MINNESOTA,
County of Ramsey, ss.

On this 12th day of February, A. D. 1852, I served the within summons and notice on the within named Charles Symonds, by giving him in hand a true and certified copy of the same. Brawley not found.

A. J. WHITNEY,
Dep'ty Sh'ff.

Fees—Service.....	$100
Copy	50
Mileage.....	10
	$1 60

District Court, first judicial district, Ramsey county, Minnesota.

JOHN M. CASTNER and JOHN S. HINKLEY, Plffs.,
vs.
BRAWLEY and SYMONDS, Defendants.

The complaint of the above named plaintiffs respectfully shows to this court, that Daniel F. Brawley and Charles Symonds, on the first day of August, A. D. eighteen hundred and fifty-one, at the county aforesaid, were associated in the business of manufacturing bricks, under the common name of Brawley & Symonds; and as such associates they, on the day and year aforesaid, at the city aforesaid, were indebted to the plaintiffs in the sum of one hundred and seventy-five dollars, for the price and value of one hundred cords of wood, before that time sold delivered to said Brawley & Symonds, and at their request, by the plaintiffs.

And the plaintiffs further aver, that said sum of money is still due and unpaid to them; wherefore they demand a judgment against said defendants for said sum of one hundred and seventy-five dollars, and interest from the first day of Aug., 1851.

L. EMMETT,
Att'y for Pl'ffs.

The foregoing endorsed: Original.—Filed Feb'y 11th, 1852. J. K. Humphrey, cl'k.

DISTRICT COURT, 1ST DISTRICT,
Ramsey County, ss.

Civil Action.

JOHN M. CASTNER and JOHN S. HINKLEY,
against
DANIEL F. BRAWLEY and CHARLES SYMONDS.

The defendant, Charles Symonds, answers to the complaint of the plaintiffs, John M. Castner and John S. Hinkley, that he was not, on the first day of August, 1851, at the county aforesaid, associated with Daniel F. Brawley, in the business of manufacturing bricks, under the common name of Brawley &. Symonds. And he denies that as such associates, they, on the day and year aforesaid, at the county aforesaid, were indebted to the plaintiffs in the sum of $175, for the price and value of 100 cords of wood,

before that time sold and delivered by the plaintiffs to the defendants, at their request. And he denies that the defendants ever bought any wood from the plaintiffs; and he denies that there is any money whatever due from the defendants to the plaintiffs.

CHARLES SYMONDS,
By RICE, HOLLINSHEAD & BECKER,
His Attorneys.

The foregoing endorsed: District court, 1st district. John M. Castner and John S. Hinkley against Daniel F. Brawley and Charles Symonds. Filed March 4th, 1852. James K. Humphrey, cl'k. Rice, Hollinshead & Becker.

In the District Court, 1st judicial district, Ramsey county.

JOHN M. CASTNER and JOHN S. HINKLEY
against
DANIEL F. BRAWLEY and CHARLES SYMONDS.

The defendants in the above action offer to allow judgment to be taken against them in favor of the plaintiffs for the sum of ninety-seven dollars and fifty cents, with interest thereon from the first day of August, 1851, and costs.

May 1, 1852.

DANIEL F. BRAWLEY & CHARLES SYMONDS,
By RICE, HOLLINSHEAD & BECKER,
Their Attorneys.

To JOHN M. CASTNER and JOHN S. HINKLEY, or
LAFAYETTE EMMETT, Esq., *Their Attorney.*

The foregoing endorsed: "District court, 1st district, Ramsey Co. John M. Castner and John S. Hinkley against Daniel F. Brawley and Charles Symonds. Offer of judgment. Filed May 4th, 1852. James K. Humphrey, cl'k."

District Court, Ramsey county, pending May Term, 1852.

JOHN M. CASTNER and JOHN S. HINKLEY
against
BRAWLEY and SYMONDS.

Take notice, that the offer made by the defendants in this case, to let the plaintiffs take a judgment for the amount therein, in said offer mentioned, is accepted by the plaintiffs.

CASTNER & HINKLEY,
Per L. EMMETT, *Att'y for Pl'ffs.*

To RICE, HOLLINSHEAD & BECKER,
Att'ys for Def'ts.

TERRITORY OF MINNESOTA,
County of Ramsey.

L. Emmett, the attorney for the plaintiff in the above entitled cause, makes oath, that he served this day, upon the defendants' att'ys, Messrs. Rice, Hollinshead & Becker, an acceptance, of which the above is a true copy, of the offer made in this case by the said defendants, herewith filed.

L. EMMETT,
Att'y for Pl'ffs.

Sworn to and subscribed in open court, May 3, 1852.
JAMES K. HUMPHREY,
Clerk.

(The foregoing endorsed:)

Castner & Hinkley vs. Brawley & Symonds. Acceptance of the offer of judg't and affidavit. Filed May 4th, 1852. Jas. K. Humphrey, cl'k. L. Emmett, att'y for pl'ffs.

Territory of Minnesota, the District Court for the 1st district, Ramsey county.—May 8th, 1852.

JOHN M. CASTNER & JOHN S. HINKLEY
against
DANIEL F. BRAWLEY & CHARLES SYMONDS.

The offer of the defendants, by their attorneys, Rice, Hollinshead & Becker, to allow judgment to be taken against them for the sum of ninety-seven dollars and fifty cents, with interest thereon from the first day of August, 1851, and costs, with the affidavit of notice of acceptance by the plaintiffs of the offer, having been filed, now, on motion of Lafayette Emmett, attorney for the plaintiffs, it is adjudged that the plaintiffs recover of the defendants the sum of one hundred and two dollars and seventy-four cents, the amount so offered as aforesaid, with interest, together the sum of nineteen dollars costs—in all, $121 74.

Am't of offer	97 50
In'st	5 24
Clerks	3 40
Costs by statute	14 00
Sheriff's fees	1 60
	$121 74

(The foregoing endorsed:)

John M. Castner & John S. Hinkley against Daniel F. Brawley & Charles Symonds. Judg't-roll. Filed May 8th, 1852. James K. Humphrey, clerk.

Territory of Minnesota, county of Ramsey.—The District Court for the 1st district.

In the name of the United States, to the sheriff of the county of Ramsey, greeting:

Whereas judgment was rendered on the eighth day of May, in the year 1852, in an action in the district court for the first judicial district and county of Ramsey, between John M. Castner and John S. Hinkley, plaintiffs, and Daniel F. Brawley and Charles Symonds, defendants, in favor of said John M. Castner and John S. Hinkley, and against said Daniel F. Brawley and Charles Symonds, for the sum of one hundred and twenty-one dollars and seventy-four cents, as appears by the judgment-roll filed in the office of the clerk of the said court; and whereas said judgment was docketed in your county on the eighth day of May, in the year 1852, and the sum of one hundred and twenty-one dollars and seventy-four cents, with interest since May 8th, '52, is now actually due thereon:

Therefore, you are commanded to satisfy the said judgment out of the personal property of the said judgment debtors, not exempt from execution, within your county; or if sufficient personal property, as aforesaid, cannot be found, then out of the real property, not exempt from execution, in your county, belonging to said judgment debtors, on the day when said judgment was so docketed in your county, or at any time thereafter, in whose hands soever the same may be; and return this execution within sixty days after its receipt by you to the clerk of the court for the first district and county of Ramsey.

Witness the Honorable Jerome Fuller, chief justice of the supreme court of the United States for the Territory of
[L. S.] Minnesota, and judge of the district court aforesaid, at St. Paul, this nineteenth day of July, in the year 1852.

JAMES K. HUMPHREY, *Clerk.*

L. EMMETT, *Attorney for Pl'ffs.*

By virtue of the annexed execution, and for want of personal property, I levied the same upon lots of land numbered fourteen (14) and fifteen (15,) in block numbered thirty-three (33,) with appurtenances belonging thereunto, in Rice & Irvine's addition to the town of Saint Paul, in the county of Ramsey, also the N. W. quarter of the N. E. quarter, and lot No. 2, of section No. 12, in township 28 north, of range 23 west, of the fourth principal meridian, as the property of the within named defendant, Chas. Symonds; and I posted up notices in three public places in said town, and caused to be published in the Minnesota Democrat, a public newspaper published in the town and county aforesaid, for six successive weeks, a notice of said levy, and that I would sell at

public vendue, at the American House, in said town, on Saturday, the second day of October, A. D. 1852, at 10 o'clock in the forenoon of said day; and I did, pursuant to said notice, between the hours of 10 a. m. and five o'clock p. m., sell to John M. Castner and John S. Hinkley the following property, for the following prices respectively, they being the highest prices bid for the same:

Lot No. 14, in block No. 33, in Rice & Irvine's addition..	$30 00
Lot 15 " " " "	65 00
The northwest ¼ of the northeast ¼ and lot number 2, of section No. 12, in township 28 N., of range 23.....	55 00
	$150 00

Sheriff's fees:	Mileage on execution.....	1 00
	Service do	1 50
	Posting notices.....	2 00
	Advertising.....	1 00
	Per centage.....	5 00
	Printer's bill.....	7 00
	Certificate and duplicate.....	1 25
	Acknowledgment and filing....	1 60
		$19 35

GEO. F. BROTT, *Sheriff.*

NOTE.—The words "with appurtenances belonging thereunto," also the words "Chas. Symonds," and the words "the northwest ¼ of the northeast ¼," interlined in the original return, as copied in the foregoing.

Attest:

GEO. W. PRESCOTT,
Clerk Dist. C't, Ramsey Co., M. T.

The sheriff will collect of Brawley & Symonds $122 24, with interest on $121 74 from May 8th, 1852, besides his fees hereon.

L. EMMETT,
Att'y for Pl'ff.

Returned Nov. 13th, 1852.

JAMES K. HUMPHREY, *Cl'k.*

TERRITORY OF MINNESOTA,
County of Ramsey, ss.

I, Geo. W. Prescott, clerk dist. court, 2d district, county of Ramsey, certify the foregoing to be full and true copies of the original files in my office, which are severally referred to by the referee, Geo. W. Prescott, in the case of Charles Symonds vs. Castner & Hinkley and Emmett & Moss, impleaded and joined by cross-bill and answer.

Witness my hand and the seal of said court, at St. Paul, this [SEAL.] 11th day of January, A. D. 1858.

GEO. W. PRESCOTT, *Clerk.*

Filed Jan. 12, 1858.

G. W. PRESCOTT, *Clerk.*

SUPREME COURT, MINNESOTA,
Clerk's Office, ss.

I, George W. Prescott, clerk of the supreme court of the Territory of Minnesota, do certify that I have compared the foregoing with the original judgment-roll on file in my office in the cause therein entitled, and with the transcript of exhibits on file in said court in said cause, as the same were certified thereto from and by the court below, and that the foregoing is a full and true transcript of said judgment-roll and exhibits.

In testimony whereof I have hereto set my hand and affixed the [SEAL.] seal of said supreme court, at St. Paul, this 5th day of May, A. D. 1858.

GEO. W. PRESCOTT, *Clerk.*

Supreme Court of the Territory of Minnesota.

CHARLES SYMONDS
vs.
JOHN M. CASTNER, JOHN S. HINKLEY, HENRY L. MOSS, and LAFAYETTE EMMETT. } In Chancery.

Lafayette Emmett, one of the defendants above named, being duly sworn as hereinafter certified, says that the value of the property in controversy in the above entitled suit exceeds the sum of one thousand dollars; and further says not, save that he asks that an appeal may be allowed to the defendants therein from the final decree of the court aforesaid to the Supreme Court of the United States, as provided by law.

LAFAYETTE EMMETT.

Sworn to and subscribed before me, this 14th day of March, A. D. 1858.

JAMES SMITH, JR.,
Notary Public, Minnesota.

{ Notary Public.
James Smith, Jr.
St. Paul, Minn. Terr. }

Filed in sup. court, April 17th, 1858.

GEO. W. PRESCOTT, *Clerk.*

Supreme Court of the Territory of Minnesota.

CHARLES SYMONDS
vs.
JOHN M. CASTNER, JOHN S. HINKLEY, HENRY L. MOSS, and LAFAYETTE EMMETT. } In Equity.

And now the above named defendants, after a final decree entered in this cause, come and show to the court that the matter in dispute exceeds the sum of one thousand dollars, and thereupon claim an appeal from said final decree to the Supreme Court of the United States, next to be holden at Washington, on the first Monday of December next; and the same is accordingly allowed, and the appellants are ordered to serve the usual citation according to law.

April 17, 1858.

CHAS. E. FLANDRAU,
Asso. Just. Sup. Ct., M. T.

Let the within be entered of record.

April 17, 1858.

CHAS. E. FLANDRAU,
Asso. Just. Sup. Ct., M. T.

Filed in sup. court April 17th, 1858.
GEO. W. PRESCOTT, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

To Charles Symonds, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to an appeal allowed and entered in the clerk's office of the supreme court of the Territory of Minnesota, wherein John M. Castner, John S. Hinkley, Henry L. Moss, and Lafayette Emmett are appellants, and you are appellee, to show cause, if any there be, why a decree therein should not be rendered in favor of said appellants, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles E. Flandrau, one of the justices of the said supreme court of the Territory of Minnesota, [L. S.] this 17th day of April, in the year of our Lord eighteen hundred and fifty-eight, (1858.)

CHAS. E. FLANDRAU,
Asso. Just. Sup. Ct., M. T.
GEO. W. PRESCOTT,
Clerk Sup. Ct., M. T.

Service of the within admitted for Chas. Symonds.
HENRY J. HOW,
Att'y of Symonds.

April 21, '58.

Filed in sup. court April 21, 1858.
GEO. W. PRESCOTT, *Clerk.*

4928.

Supreme Court of the Territory of Minnesota.

Know all men by these presents that we, Lafayette Emmett, Henry L. Moss, John M. Castner, and George W. Armstrong are held and firmly bound unto Charles Symonds in the sum of one thousand dollars, to be paid to the said Charles Symonds, his executors and administrators; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this thirteenth day of April, A. D. eighteen hundred and fifty-eight.

The condition of this obligation is such, that whereas the said Charles Symonds, on the fourteenth day of January, A. D. 1858, obtained a decree in the supreme court of the Territory of Minnesota, in a suit wherein the said Symonds was complainant, and John M. Castner, John S. Hinkley, Henry L. Moss, and Lafayette Emmett were respondents, setting aside and annulling a certain sale made by the sheriff of Ramsey county, Minnesota, of certain real estate in said decree specified and described, and annulling the deed given therefor by said sheriff to said Castner & Hinkley as purchasers at said sale; and also ordering and decreeing that said deed and two certain other deeds in said decree mentioned, given by said Castner & Hinkley to said Lafayette Emmett, and to said Lafayette Emmett and said Henry L. Moss, for the real estate in said deeds and said decree described, be delivered up to be cancelled; and in default of said delivery, that said decree be recorded, and stand and operate as such cancellation. That the sum of one hundred and fifty-three dollars and thirty-five cents paid into court be deemed to be a repayment of the purchase-money or bid for which the real estate aforesaid was sold, and that defendants pay all costs of said suit, afterwards taxed at one hundred and forty-four dollars and fifty cents. And whereas the said John M. Castner, John S. Hinkley, Henry L. Moss, and Lafayette Emmett have appealed from said decree, which is final, to the Supreme Court of the United States, now, therefore, if the above named John M. Castner, John S. Hinkley, Henry L. Moss, and Lafayette Emmett shall prosecute their said appeal to effect, and shall answer all damages and costs, and do and perform the judgment or decree of *of* said Supreme Court of the United States, should the same be adverse to them, then this obligation to be void; otherwise, the same shall be and remain in full force and virtue.

L. EMMETT, [SEAL.]
H. L. MOSS, [SEAL.]
G. W. ARMSTRONG, [SEAL.]
JOHN M. CASTNER. [SEAL.]

Executed and delivered in presence of—
J. M. GILMAN,
D. W. CORNWELL.